

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3 -----
4 **DOUGLAS J. HORN and CINDY HARP-HORN,**

5 Plaintiffs,

6 -vs-

Civil Action No.: 15-cv-701-FPG

7 **MEDICAL MARIJUANA, INC., DIXIE ELIXIRS AND**
8 **EDIBLES, RED DICE HOLDINGS, LLC, and DIXIE**
9 **BOTANICALS,**

Defendants.
10 -----

Examination Before Trial of

11 **DOUGLAS J. HORN,** held before Marissa A.

12 Ashcroft, Notary Public, at MURA & STORM,

13 PLLC, 930 Rand Building, 14 Lafayette Square,

14 Buffalo, New York, on May 8th, 2017 at 10:17

15 a.m., pursuant to notice.
16
17
18
19
20
21
22
23

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A P P E A R A N C E S

APPEARING FOR THE PLAINTIFF:

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BY: FRANK HOUSH, ESQ. and
ELIZABETH TOMMANEY, ESQ.,
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Buffalo, New York 14202
(716) 362-1128

APPEARING FOR THE DEFENDANT, MEDICAL
MARIJUANA, INC. and RED DICE HOLDINGS, LLC:

MURA & STORM, PLLC
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14 Lafayette Square
Buffalo, New York 14203
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APPEARING FOR THE DEFENDANT, DIXIE ELIXIRS AND
EDIBLES and DIXIE BOTANICALS:

MESSNER REEVES LLP
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ALSO PRESENT: Cindy Sue Harp-Horn

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1		<u>W I T N E S S E S</u>	
2	WITNESS	EXAMINATION	PAGE
3	Douglas J. Horn	By Mr. Boron	5
4		By Mr. Mazzola	251
5		<u>E X H I B I T S</u>	
6	EXHIBIT	DESCRIPTION	PAGE
7	Exhibit 1	Amended Notice of	5
8		Examination Before Trial	
9	Exhibit 2	Complaint and Jury Demand	5
10	Exhibit 3	Enterprise Application	5
11		For Employment	
12	Exhibit 4	Statement to Enterprise	53
13	Exhibit 5	Enterprise Transportation	57
14		Company Position Description	
15		Dated 3/18/02	
16	Exhibit 6	Illegal and unauthorized	61
17		Items at operational	
18		facilities document dated	
19		3/18/02	
20	Exhibit 7	Acknowledgement of receipt	64
21		Dated 3/18/02	
22	Exhibit 8	Enterprise Transportation	68
23		Company Acknowledgement	
24		Of receipt dated 5/13/02	
25	Exhibit 9	Enterprise Transportation	72
26		Houston, Texas Training	
27		Delivered by Employer dated	
28		5/17/02	
29	Exhibit 10	Acknowledgement of receipt	80
30		Dated 4/17/03	
31	Exhibit 11	Enterprise Products	82
32		Company and DOT Drug and	

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1		Alcohol Policy Summary	
2	Exhibit 12	Personnel Action Request Dated 8/18/11	89
3	Exhibit 13	Enterprise DOT Reportable	100
4		Dated March 22, 2012	
5	Exhibit 14	Workers' Comp Doctor Form	116
6	Exhibit 15	Personnel Action Request Dated 10/17/22	126
7	Exhibit 16	Form 8879 dated 2011	143
8	Exhibit 17	Form 8879 dated 2012	143
9	Exhibit 18	Form 1040 dated 2013	143
10	Exhibit 19	Form 1065 dated 2013	143
11	Exhibit 20	Form 1040 dated 2014	143
12	Exhibit 21	Form 1040 dated 2015	143
13	Exhibit 22	Form 1040 dated 2016	143
14	Exhibit 23	Medical Marijuana High Times Article	203
15	Exhibit 24	Medical Marijuana High Times Magazine	211
16	Exhibit 25	Three pages of print-outs Of pictures	219
17	Exhibit 26	Drug and Alcohol Plan Enterprise Products Company	254
18	Exhibit 27	Invoice and Packing Slip Dated September 17, 2012	270
19			
20			
21			
22			
23			

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 The following were marked for identification:

2 Exhibit 1 Amended Notice of
Examination Before Trial

3 Exhibit 2 Complaint and Jury Demand

4 Exhibit 3 Enterprise Application
5 For Employment

6
7 **D O U G L A S J. H O R N**

8 195 Parker Road, Lockwood, New York 14859,
9 having been first duly sworn, was examined and
10 testified as follows:

11
12 **EXAMINATION BY MR. BORON:**

13
14 Q. Mr. Horn, my name is Eric Boron. I'm an
15 attorney with the law firm of Mura & Storm. I
16 represent two of the defendants. I represent
17 Medical Marijuana, Incorporated and I
18 represent Red Dice Holdings, LLC. There are
19 other lawyers for other defendants in this
20 room.

21 I'm going to start with the questioning
22 and -- so let me go over a couple ground rules
23 with you. If I ask you a question you don't

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 understand, will you let me know?

2 A. Okay.

3 Q. You have to say yes or no.

4 A. Yes.

5 Q. Okay. Do you understand that you're going to
6 have to answer every question orally with
7 words rather than head nods or shoulder
8 shrugs?

9 A. Yes.

10 Q. Okay. Have you ever been deposed before?

11 A. No.

12 Q. Have you ever given sworn testimony in court
13 before?

14 A. No.

15 Q. Well, let me go over a couple other things
16 that will help us in the long run. Please let
17 me get to the end of every question I ask
18 before you begin to answer. It seems simple,
19 but oftentimes you'll find that you're going
20 to know where I'm going with a question before
21 I get to the end of it and you're going to
22 want to start answering. Don't do that, wait
23 until I get to the end of the question before

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 you start answering, okay?

2 A. Yes.

3 Q. I will do the same for you. I will wait for
4 you to get to the end of your answer before I
5 start asking the next question; acceptable to
6 you?

7 A. Yes.

8 Q. Okay. Have you consumed any drugs of a
9 prescription or nonprescription nature in the
10 last 12 hours?

11 A. Yes, I have.

12 Q. Okay. Prescription or nonprescription?

13 A. Prescription.

14 Q. What drugs did you consume in the last 12
15 hours that were prescription drugs?

16 A. Lisinopril.

17 Q. What's the name of it?

18 A. Lisinopril.

19 **MR. HOUSH:** Is it Lisinopril?

20 **THE WITNESS:** Yeah, Lisinopril or
21 something like that. L-I -- I don't even know
22 how to spell it.

23 **MR. HOUSH:** L-I-S-I-N-O-P-R-I-L.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Hypertension medication. I'm not going to
2 testify anymore, I'll shut up. That's it.

3 **BY MR. BORON:**

4 Q. Who prescribed the Lisinopril?

5 A. Dr. Choi.

6 Q. Dr. Choi?

7 A. Mm-hmm.

8 Q. How do you spell his last name?

9 A. C-H-O-I.

10 Q. Is Dr. Choi your primary care physician?

11 A. Yes, he is.

12 Q. How long has he been your primary care
13 physician?

14 A. At least 10 years.

15 Q. Where is he located?

16 A. Vestal, New York.

17 Q. Does he have offices elsewhere other than
18 Vestal?

19 A. Not that I know of.

20 Q. Is Dr. Choi also your wife's primary care
21 physician?

22 A. Yeah.

23 Q. Are there other prescription drugs that you

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 took in the last 12 hours?

2 A. Hydrocodone.

3 Q. What dosage of either of those drugs did you
4 take in the last 24 hours?

5 A. Of the hydrocodone?

6 Q. Yeah.

7 A. They're 5/325s, I believe.

8 Q. One pill?

9 A. Yeah.

10 Q. And the other drug?

11 A. One pill.

12 Q. What's the dosage on that?

13 A. I'm not sure.

14 Q. At the present time are you -- do you have
15 prescription for any other drugs besides those
16 two from Dr. Choi?

17 A. No.

18 Q. Did you take any nonprescription drugs in the
19 last 24 hours?

20 A. Vitamins.

21 Q. Did you consume any alcohol in the last 12
22 hours?

23 A. No.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. Did you take any nonprescription drugs besides
2 vitamins in the last 24 hours?

3 A. No.

4 Q. Do either of the prescription drugs that you
5 took in the last 24 hours affect your
6 long-term or short-term memory?

7 A. No.

8 Q. Have you ever been treated for long-term or
9 short-term memory loss?

10 A. No.

11 Q. I'm showing you what's marked as Exhibit 1 for
12 this deposition. Frank.

13 MR. HOUSH: Sir.

14 MR. BORON: This is your pile.

15 MR. HOUSH: All right. Thank you.

16 MR. MAZZOLA: It's the Notice of
17 Deposition?

18 MR. BORON: Yes, for Mr. -- that's
19 probably on the top of that pile.

20 MR. HOUSH: I'll share with you, Cindy,
21 so we always -- we have copies of everything
22 they're showing him.

23 BY MR. BORON:

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. Have you seen a copy of Exhibit 1, Mr. Horn,
2 before?

3 A. No.

4 Q. No. Are you here in response to a Notice of
5 Deposition requiring you be here for the
6 purpose of this lawsuit?

7 A. Can you rephrase that?

8 Q. Why are you here this morning, sir?

9 A. Because of the product that I took.

10 Q. Are you --

11 A. Got me fired.

12 Q. Are you -- did your attorney ask you to be
13 here?

14 A. Yes.

15 Q. Are you prepared to give testimony about the
16 facts related to your lawsuit against my
17 clients?

18 A. Yes.

19 Q. Did you prepare for this deposition in any
20 way?

21 A. Not really.

22 Q. Did you review any documents to prepare for
23 the deposition?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. Not recently, no.

2 Q. Have you reviewed the documents that were
3 produced by your former employer, Enterprise?

4 A. I went over just a few of them. There was
5 like a thousand pages and I was on the road,
6 so not really, no.

7 Q. Have you reviewed the documents that were
8 produced in response to a subpoena in this
9 lawsuit by MEDTOX?

10 A. No.

11 Q. Did you bring the product that you -- that you
12 took --

13 A. No.

14 Q. -- in October 2012?

15 A. No, I did not.

16 Q. Do you have the bottle?

17 A. At home.

18 Q. Is there anything inside that bottle?

19 A. Very little.

20 Q. There's something in it?

21 A. Yes, about this much of the bottle.

22 Q. Okay.

23 MR. HOUSH: That was on my advice, Eric.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 He was concerned about the legality that he
2 could -- he could not transport it legally and
3 that if he was stopped he might be subject to
4 law enforcement. He had a similar concern
5 about shipping it to me, so based on those
6 concerns I --

7 MR. BORON: How is he going to get it to
8 court?

9 MR. HOUSH: That's a good question. I
10 don't know.

11 BY MR. BORON:

12 Q. Okay. All right. I'm showing you what's
13 marked as Exhibit Number 2 for today's
14 deposition, sir. For the record, Exhibit 2 is
15 a copy of the complaint in this lawsuit. Did
16 you -- do you have any involvement in drafting
17 the complaint?

18 A. Yes.

19 Q. Yes. What was your involvement?

20 A. Just stating the facts of the product.

21 Q. Did you, yourself, draft any specific portion
22 of the complaint?

23 A. I'd have to go over it again to see.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. Did you ever read through the whole complaint?

2 A. A long time ago, yeah.

3 Q. You read through it word for word at one
4 point?

5 A. Yeah, at one point.

6 Q. Okay. When was that?

7 A. When it was first given to me I would imagine.

8 Q. Was it given to you by somebody else that
9 drafted it?

10 A. Well, Jeffrey Benjamin e-mailed it to us to
11 begin with and that's when we went over it.

12 Q. Have you had any other attorneys besides
13 Mr. Benjamin or Mr. Housh in this lawsuit?

14 A. No.

15 Q. Have you been advised by any other attorneys
16 besides Mr. Benjamin --

17 A. No.

18 Q. -- and Mr. Housh in this lawsuit?

19 A. No.

20 **MR. HOUSH:** Just so we're clear,
21 Ms. Tommaney is present in the room.

22 A. Well, yeah.

23 Q. Let me get some background facts about you,

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 sir. What's your full name?

2 A. Douglas James Horn.

3 Q. Have you ever gone by any other names?

4 A. When I was a minor, yeah. Last name was
5 Chavez, C-H-A-V-E-Z.

6 **MR. MAZZOLA:** Same first names?

7 Q. So your last name was Chavez?

8 A. As a minor, yeah.

9 Q. Until what year?

10 A. Until I was about 15. It wasn't legally my
11 name, that's the name I went by.

12 Q. Has your legal name ever changed?

13 A. No.

14 Q. Why did you go by the last name of Chavez?

15 A. That's who my mom was married to.

16 Q. Was that last name of Chavez used at school
17 for you?

18 A. Yeah.

19 Q. Is your mom still alive?

20 A. Yes.

21 Q. Where does she reside today?

22 A. In Hacienda Heights, California.

23 Q. And what's her name?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. Betty Chavez.

2 Q. Is that Betty as in Elizabeth Chavez?

3 A. Just Betty.

4 Q. Just Betty. Who is the gentleman that she was
5 married to?

6 A. Mike.

7 Q. Is he still alive?

8 A. Yes, he is.

9 Q. Was Mike Chavez your biological father?

10 A. No.

11 Q. Who was your biological father?

12 A. Douglas Horn.

13 Q. Is he still alive?

14 A. Yes, he is.

15 Q. Where does he reside?

16 A. Imboden, Arkansas.

17 Q. What's his address?

18 A. I'm not sure what it is offhand.

19 Q. B-O-W-D-E-N?

20 A. Yes, Imboden, I-M-B.

21 Q. Do you have your cell phone with you?

22 A. Yeah.

23 Q. Is his number on your cell phone?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. His address is. Do you remember --

2 MR. HOUSH: You can't talk to anybody
3 else.

4 THE WITNESS: Oh.

5 MR. HOUSH: At least while we're on the
6 record.

7 THE WITNESS: I don't have his actual
8 address stored.

9 BY MR. BORON:

10 Q. Phone number?

11 A. I have his phone number.

12 Q. Thank you.

13 A. (870) 869-2705.

14 Q. While you have that phone out do you have John
15 Frezzo's phone number in there?

16 A. No, I don't.

17 Q. Where is John Frezzo living?

18 A. In Kansas, I believe.

19 Q. When was the last time you spoke with John
20 Frezzo?

21 A. I haven't spoke to John Frezzo in quite some
22 time.

23 Q. Well, have you spoken to him in the last year?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. Not on the phone, maybe through Facebook.

2 Q. Have you spoken to John Frezzo about this
3 lawsuit?

4 A. Not recently, no.

5 Q. Have you ever spoken with John Frezzo about
6 this lawsuit?

7 A. Just when we got fired I told him that I was
8 going to be taking it to court.

9 Q. How long was he your supervisor?

10 A. About six years.

11 Q. Did you know John Frezzo before you started
12 working at Enterprise?

13 A. No.

14 Q. Where did you go to high school?

15 A. Sequoia High School.

16 Q. What municipality is that in?

17 A. Tulare County. Tulare County.

18 Q. How do you spell that?

19 A. T-U-L-A-R-E.

20 Q. It's in California?

21 A. Yeah.

22 Q. What name were you going by when you entered
23 high school?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. When I entered high school?

2 Q. Yes.

3 A. That would have been 9th grade that would have
4 been under Chavez.

5 Q. So were you known as Douglas James Chavez at
6 that point in time?

7 A. In the 9th grade, yeah. I went to a different
8 school.

9 Q. So in 9th grade you were --

10 A. Yes, in 9th grade I lived with my mother and
11 went to school there with her and then 10th
12 grade I moved with my dad -- my biological dad
13 and then went to school in Sequoia.

14 Q. What was the high school you went to 9th
15 grade?

16 A. Baldwin Park.

17 Q. Did you have to go through a legal procedure
18 to get your last name changed?

19 A. My name was never legally changed, it was just
20 basically she used Chavez and got away with
21 it.

22 Q. Okay. Is Baldwin Park School also in Tulare
23 County?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. No, that's in Orange County, I believe.

2 Q. Did you ever get arrested in California?

3 A. As a minor.

4 Q. What were you charged with when you got
5 arrested in California?

6 A. As a minor? GTA.

7 Q. What's GTA?

8 A. Grand theft auto.

9 Q. You can see I'm not much of a gamer. What
10 happened to those charges of grand theft auto?

11 A. They pretty much got dropped and I agreed to
12 move in with my dad at that point.

13 Q. Did you get convicted of any crime?

14 A. No.

15 Q. In California?

16 A. No.

17 Q. Ever convicted of a crime in New York State?

18 A. No.

19 Q. Ever convicted of a crime anywhere?

20 A. No.

21 Q. When you moved in with your biological dad,
22 what was he doing for a living?

23 A. He was disabled.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. Your date of birth, sir?

2 A. 4/29/65.

3 Q. Where were you born?

4 A. Walla Walla, Washington.

5 Q. How long did you live in Washington?

6 A. I'm not sure.

7 Q. When were you last a resident of California?

8 A. Back in 1998.

9 Q. Did you know your wife Cindy at that point in
10 time?

11 A. Yes.

12 Q. Yes. Were you married at that point in time?

13 A. Yes.

14 Q. When did you get married?

15 A. 1990.

16 Q. How many times have you been married, sir?

17 A. Twice.

18 Q. When did you first get married?

19 A. 1983.

20 Q. Is your first wife -- is your first wife still
21 alive?

22 A. To my knowledge, yeah.

23 Q. What's her name?

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1 A. Candy and I'm not sure of her last name.

2 Q. Did she take your last name when she married
3 you?

4 A. She did.

5 Q. She was known as Candy Horn?

6 A. Mm-hmm.

7 MR. HOUSH: You have to say yes or no,
8 Doug.

9 THE WITNESS: Yes.

10 MR. HOUSH: The only reason for that is
11 she can't take down a --

12 Q. Thanks, Frank. Your Social Security number,
13 sir?

14 A. [REDACTED] 8636 -- 8636.

15 Q. Candy's maiden name was?

16 A. Johnson.

17 Q. When's the last time you spoke to her?

18 A. It's been years. I have no -- I couldn't tell
19 you when.

20 Q. Have you spoken to her since 1990?

21 A. Since 1990, yeah.

22 Q. Since 2000?

23 A. That would probably be the time I talked to

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 her last, around in that area.

2 Q. Has she remarried?

3 A. I have no idea.

4 Q. At the time you last spoke to her what was she
5 doing for a living?

6 A. Painting ducks.

7 Q. Is she an artist?

8 A. No, I don't know what she is.

9 Q. Did she have employment?

10 A. Yes.

11 Q. With who?

12 A. That's what she told me. I have no idea. I
13 didn't ask.

14 Q. Okay. Do you currently have a Facebook
15 account, sir?

16 A. Yes, I do.

17 Q. What's your username?

18 A. James Horn.

19 Q. Do you have more than one account or just one
20 with Facebook?

21 A. Just the one.

22 Q. How long have you had that account?

23 A. Since 2010.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. Always with the same username, James Horn?

2 A. It might have been under Douglas Horn at one
3 time and then I changed it to James because
4 most people know me by James.

5 Q. Did you ever allow anyone to post on Facebook
6 as if they were you?

7 A. No.

8 Q. Do you currently have a Twitter account?

9 A. No.

10 Q. Have you ever had a Twitter account?

11 A. I signed up for it, never used it.

12 Q. When did you sign up for it?

13 A. I -- a couple years ago maybe.

14 Q. When you say "never used it," you mean
15 literally never posted one thing to Twitter?

16 A. Never posted anything.

17 Q. Do you currently have a YouTube account?

18 A. Yep.

19 Q. What's your YouTube username?

20 A. I'm not sure. I think Driving Force.

21 Q. Just one YouTube account or more than one?

22 A. I might have another name, but I don't use it.
23 I don't post things on YouTube I just watch

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 things on YouTube.

2 Q. Have you ever posted anything on YouTube?

3 A. No.

4 Q. Have you ever commented on anything that was
5 posted by somebody else to YouTube?

6 A. I commented on a few things, sure.

7 Q. Have you ever allowed anyone to post to
8 YouTube as if they were you?

9 A. No.

10 Q. Do you use any other social media sites that I
11 haven't named?

12 A. No.

13 Q. After you started this lawsuit against my
14 client, did you delete any posts you had made
15 to Facebook?

16 A. Nope.

17 Q. Have you ever deleted a post you made to
18 Facebook?

19 A. I have.

20 Q. What were the circumstances for deleting a
21 post to Facebook?

22 A. Fake news.

23 Q. What do you mean by "fake news"?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. Posting a news article that wasn't true.

2 Q. You were the poster of a news article that
3 wasn't true?

4 A. No, I reposted it and then did some research
5 and found out it wasn't true so then I deleted
6 it.

7 Q. We just had an example there of you starting
8 to answer before I got to the end of a
9 question. It makes it super hard on Marissa.

10 A. Gotcha.

11 Q. Okay. Who's your current employer, sir?

12 A. ICX.

13 MR. MAZZOLA: How do you spell that?

14 Q. Three letters, I-C-X?

15 A. ICX, yeah. It stands for Interstate Carrier
16 Express.

17 Q. What's ICX's freight line?

18 A. I don't know.

19 Q. You don't know. What's Gully Transportation?

20 A. That's part of ICX. It's like two companies,
21 mother company.

22 Q. Which is the mother company --

23 A. Gully.

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1 Q. -- ICX or Gully?

2 A. Gully.

3 Q. G-U-L-L-Y?

4 A. Yes.

5 Q. Where does ICX have its headquarters?

6 A. New Jersey, Willingboro -- Willingboro.

7 Q. Can you spell that?

8 A. W-I-L-L-I-N-G-B-O-R-O.

9 Q. What do you do for ICX?

10 A. I drive.

11 Q. When did you start working for ICX?

12 A. In November, I think 4th of 2015.

13 Q. Before November 4th, 2015 had you ever worked
14 for either ICX or Gully?

15 A. No.

16 Q. Have you been a driver since November 4th,
17 2015 for ICX?

18 A. Yeah.

19 Q. Continuous? There hasn't been any break of
20 employment?

21 A. No.

22 Q. Since November 4th, 2015 have you driven for
23 any other company?

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1 A. Just ICX.

2 Q. Who do you get paid by, ICX or Gully?

3 A. I believe ICX.

4 Q. Did you have to make an application with ICX
5 to get the job?

6 A. Somewhat, yeah.

7 Q. What do you mean by "somewhat"?

8 A. I know we did a lot of talking on the phone
9 until I met him in person.

10 Q. Did you fill out an application form with ICX?

11 A. Yeah, we had to fill out an app.

12 Q. Was that an online form that you filled out or
13 a paper form that you mailed back?

14 A. No, it was a paper form.

15 Q. You signed the application form before you
16 mailed it in?

17 A. Yeah.

18 Q. Did you keep a copy of it?

19 A. No.

20 Q. You didn't keep a copy of the application form
21 you sent in?

22 A. No.

23 MR. HOUSH: Object to form.

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1 Q. At the time that you applied for the position
2 with ICX did you know anybody in the company?

3 A. No.

4 Q. How did you come to find out that ICX was
5 looking for drivers?

6 A. A mutual friend.

7 Q. Who's that mutual friend?

8 A. Augie Piani.

9 Q. Can you spell that for us?

10 A. Augie, A-U-G-I-E and Piani is P-I-A-N-I.

11 Q. Is Augie Piani affiliated or associated with
12 ICX?

13 A. No, he was associated with them years ago when
14 they were another company.

15 Q. Is Augie Piani a driver himself?

16 A. Yes, he is.

17 Q. Did you ever work with Augie Piani at another
18 company?

19 A. Yes, I did.

20 Q. Which company was that?

21 A. KL Harring.

22 Q. When did you work at KL Harring?

23 A. We started in November 24th of 2014, I believe

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1 and then to April of 2015. I may be wrong on
2 those years.

3 Q. You may be wrong on the years?

4 A. Yeah. I'd have to flip through it.

5 Q. Did you bring any records with you that you
6 can refer to to refresh your memory?

7 A. No.

8 Q. Well, which years are you wrong on?

9 A. '13, '14.

10 Q. Are we talking about your whole testimony
11 or --

12 A. No.

13 Q. -- just what you said in the last answer?

14 A. No, KL Harring.

15 MR. HOUSH: Object to form.

16 A. KL Harring.

17 Q. Okay. We'll go back to that in a few minutes.

18 Okay. Let me ask you a few more questions
19 about ICX. What kind of driving do you do for
20 ICX?

21 A. Truck driving.

22 Q. Is it driving --

23 A. General freight.

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1 Q. -- across the country?

2 A. Yeah, open road.

3 Q. What are you transporting?

4 A. Various refrigeration products to auto parts
5 to some HazMat occasionally.

6 Q. Did you meet with somebody from ICX before you
7 started to drive with them?

8 A. I met with the regional manager, yeah.

9 Q. Who is that?

10 A. Gary Wagner.

11 Q. Does he work in that Willingboro, New Jersey
12 office?

13 A. Yes, he is.

14 Q. When you say you met with him, was this a
15 face-to-face --

16 A. Yes, it was.

17 Q. -- person-to-person meeting?

18 A. Yep.

19 Q. When did that happen?

20 A. As far as specific date, I'm not sure. A
21 couple of months before I got hired.

22 Q. Was it an interview?

23 A. Pretty much, yeah.

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1 Q. Did you take a road test with --

2 A. No.

3 Q. -- ICX?

4 A. No.

5 Q. Is there anybody else that was part of that
6 meeting between you and Gary Wagner?

7 A. Just my wife Cindy.

8 Q. Okay. Did the two of you apply together as a
9 team to ICX?

10 A. That's correct.

11 Q. Before you started working for ICX did you
12 have to take a drug test?

13 A. Yes, I did.

14 Q. Where was that drug test administered?

15 A. There in New Jersey, Willingboro.

16 Q. At their offices?

17 A. No, at, I believe it's Kosaka[sic]. I believe
18 that's the name. It's like a Quest
19 Diagnostics.

20 Q. Okay.

21 A. Except I think it's Kosaka.

22 Q. Was Cindy drug tested at Kosaka, as well?

23 A. Yes.

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1 Q. How long did you meet with Gary Wagner?

2 A. Just for about an hour.

3 Q. Just one meeting or more than one meeting?

4 A. Just one meeting.

5 Q. What was the purpose of that meeting with Gary
6 Wagner?

7 A. To see if we were going to be a good fit.

8 Q. Did he ask you why you had stopped working for
9 Enterprise?

10 A. Yep.

11 Q. What did you tell him?

12 A. I told him I was terminated taking an
13 over-the-counter product.

14 MR. HOUSH: There's water over there.

15 MR. BORON: Just so you guys know, we
16 can take a break at any time. This is not an
17 endurance test. I don't want to put somebody
18 through some difficult situation. We can take
19 breaks to get drinks of water, coffee, go to
20 the lav, whatever you need. Frank, do you
21 mind if I keep going?

22 MR. HOUSH: No, it's up to my clients.
23 If they need a break they'll tell us.

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1 MR. BORON: Okay.

2 MR. HOUSH: Do you want any water,
3 Counsel?

4 MR. MAZZOLA: No, thank you.

5 MS. LINDSTROM: No, thank you.

6 BY MR. BORON:

7 Q. Who's your supervisor today at ICX?

8 A. Gary Wagner.

9 Q. When was the first time you told Gary Wagner
10 about this lawsuit?

11 A. The lawsuit?

12 Q. Mm-hmm.

13 A. I think on our hire date because I told him
14 I'd probably need time off.

15 Q. During the interview you had, the one hour
16 interview you didn't tell him about the
17 lawsuit?

18 A. No.

19 Q. What's Gary Wagner's phone number?

20 A. I have to look it up.

21 Q. Thanks.

22 A. (609) 422-5971.

23 Q. Let's go over your compensation package that

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1 you have with ICX right now. You do receive
2 compensation for driving for them?

3 A. Yes.

4 Q. Okay. How are you compensated?

5 A. We're paid by mile.

6 Q. You mean by mile driven?

7 A. Yes.

8 Q. What's the rate?

9 A. 55.75 per mile, 55 cents and three quarters.

10 Q. Does that rate vary based on what you're
11 transporting?

12 A. No.

13 Q. You could be transporting HazMat or auto
14 parts?

15 A. Correct.

16 Q. Okay. Was that your starting mileage rate
17 when you started at ICX?

18 A. It was 55.5.

19 Q. When did it go up?

20 A. Just last December.

21 Q. What other benefits do you receive from
22 working at ICX besides that mileage rate?

23 A. They pay hourly after two -- two hours, 12.75

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1 per driver.

2 Q. So your route has to be longer than two hours
3 to get that hourly rate?

4 A. That's wait time, unloading and loading.

5 Q. It is per driver, right?

6 A. The 12.75 is. The 55 and a half is split per
7 driver.

8 Q. ICX provides the trucks that you drive?

9 A. Yes.

10 Q. Have you ever owned your own truck --

11 A. No.

12 Q. -- for work? If the wait time is less than
13 two hours you don't receive that 12.75 per
14 driver?

15 A. Correct.

16 Q. What about your travel expenses, are you
17 compensated by ICX for travel expenses?

18 A. No.

19 Q. Do you have a fringe benefit package from ICX?

20 A. No, as far as like 401(k)s.

21 Q. Do you have any life insurance with ICX?

22 A. I believe so.

23 Q. How much?

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1 A. I believe it's 30,000.

2 Q. Did you get a signing bonus when you started
3 with ICX?

4 A. No.

5 Q. Did you receive any bonuses from ICX since you
6 worked at the place?

7 A. No.

8 Q. Do you get paid vacation from ICX?

9 A. Yes.

10 Q. How much?

11 A. One week. I'm not sure of the pay.

12 Q. Do you receive a Christmas bonus from ICX?

13 A. No.

14 Q. Is there a 401(k) plan or some kind of a
15 retirement savings plan?

16 A. There is one, we're not enrolled in it yet.

17 Q. How does the retirement savings plan work?

18 A. I'm not sure.

19 Q. Are you doing loading or unloading of trucks?

20 A. No.

21 Q. Does Cindy do loading or unloading of trucks
22 with ICX?

23 A. No.

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1 Q. Did you have to do loading or unloading in any
2 place you worked in the past?

3 A. Occasionally with a pallet jack moving stuff
4 off. And with ICX there's maybe one or two
5 stops where I have to pull a pallet of. It's
6 not really unloading.

7 Q. Do you have to wear a company outfit or
8 uniform when you drive for ICX?

9 A. We do, yes.

10 Q. They provide it?

11 A. Yes.

12 Q. What kind of clothing does ICX provide you
13 with?

14 A. Just a standard uniform.

15 Q. Okay. Winter gear?

16 A. No.

17 Q. Do you get that from ICX?

18 A. No.

19 Q. No. Do you get driving gloves from ICX?

20 A. Nope.

21 Q. Sunglasses?

22 A. Nope.

23 Q. Do you get profit sharing from ICX?

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1 A. No.

2 Q. How about health insurance?

3 A. Yeah.

4 Q. How does your health insurance benefit work at
5 ICX?

6 A. I'm not sure.

7 Q. Does that include dental insurance?

8 A. I don't think so, but I'm not sure.

9 Q. Are you sure?

10 A. I don't know.

11 Q. You just don't know?

12 A. Yeah, I don't know.

13 Q. How about eyeglasses, do you have eyeglasses
14 through the insurance?

15 A. I don't think so.

16 Q. When you applied at ICX did you have to
17 disclose any accidents that you had had with
18 prior trucking?

19 A. They pretty much do a search on that, so if
20 there is anything there they'll find it.

21 Q. On the application form itself --

22 A. Yeah, we had to disclose it.

23 Q. You did, okay. Did you have to disclose the

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1 results of any drug tests?

2 A. No.

3 Q. Since your employment was terminated at
4 Enterprise, how many places have you applied
5 at for work?

6 A. Over 50 I know that. I didn't keep count. I
7 didn't keep a list.

8 Q. What makes you say over 50?

9 A. Because there's over 50 that I can -- I mean,
10 I can name you 25 right off the top of my
11 head.

12 Q. Why don't you do that.

13 A. Okay. We got Indian Transport, J.B. Hunt,
14 U.S. Xpress, Celadon, Swift, Continental
15 Carbonics, Genox, Keenan, Trimac, Snyder,
16 Transport Services, Leonard's Express, RGB,
17 who else? Oakley, two R & Rs, there's two
18 different companies named R & R, one is R & R
19 Transport and I think the other one is R & R
20 Incorporated. I forget the other name.
21 Horizon.

22 Q. Verizon or Horizon?

23 A. Horizon. Do you want me to keep going on? I

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1 can think of more it's just --

2 Q. You said you had 25 off the top of your head.

3 A. Well.

4 Q. 17 so far.

5 A. I can probably come up with them.

6 Q. Let's go to a few follow-up questions.

7 A. Okay.

8 Q. So you applied at these various places since
9 you lost your position at Enterprise, correct?

10 A. Correct.

11 Q. All right. And what -- when you were -- got a
12 result back, right, from the place you had
13 applied for, would it come in the form of a
14 letter saying that they weren't going to hire
15 you or a phone call or e-mail?

16 A. A lot of it was done on the telephone because,
17 number one, you have to find out company
18 policy and so if company policy says that if
19 you've ever had a dirty random they won't have
20 you, so I would call and find out their
21 policies to see if I would even be able to put
22 an application in and if it was no, I would
23 find out, well, how many years does that last.

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1 Some have three-year, five-year, or indefinite
2 not hire, so it was all done with a phone
3 call. A lot of places that I applied for I
4 never got -- you don't get denial letters or
5 anything like that. I mean, I've -- I've
6 gotten --

7 **MR. HOUSH:** Have some water. You're
8 doing great. Deep breath, have some water.

9 Q. Are you done with your answer, sir?

10 A. Well, a lot of times when you apply there is
11 no denial letter.

12 Q. So you don't know -- in those situations you
13 don't know why it is --

14 A. Nope.

15 Q. -- you didn't get a job?

16 A. That's correct.

17 Q. When you did get some kind of denial letter
18 would the denial letter say why you didn't get
19 the job?

20 A. Not specifically, no.

21 Q. Do you have any letters?

22 A. I have a couple.

23 Q. Have you saved any letters on denial --

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1 **MR. HOUSH:** Object to form.

2 A. I submitted some letters in this case. The
3 couple that I did get, yes.

4 Q. Did you get any letter from any perspective
5 employer saying that they wouldn't hire you
6 because of your drug test incident with
7 Enterprise?

8 A. Not specifically, no.

9 Q. When did you start at Enterprise?

10 A. 2001 March.

11 Q. I'm showing you what's marked as Exhibit 3,
12 sir.

13 A. Okay.

14 **MR. BORON:** That's not it, though,
15 Frank. I'm going to give you a copy, all
16 right?

17 **MR. HOUSH:** All right.

18 **MR. BORON:** This packet is where I have
19 specific copies of specific things.

20 **MR. HOUSH:** All right.

21 **THE WITNESS:** 2002, I'm wrong on the
22 date.

23 **BY MR. BORON:**

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1 Q. Okay. So looking at Exhibit 3 refreshes your
2 memory and you see it's 2002 that you started
3 at Enterprise?

4 A. Yep.

5 Q. Well, flip -- let me say, first of all for the
6 record, this is a photocopy of four pages and
7 the first page says Enterprise in the upper
8 left-hand corner, correct?

9 A. Yeah.

10 Q. Okay. And there's a heading on the first page
11 that says Application For Employment, correct?

12 A. Yes.

13 Q. And in the upper right-hand corner date of
14 application is marked in as 3/4/02; do you see
15 that?

16 A. Yes.

17 Q. Is that your handwriting on the first page?

18 A. To my knowledge, yeah.

19 Q. Okay. And then flipping to the last page, the
20 signature. It says Applicant Signature. Is
21 that your signature on the last page of
22 Exhibit 3?

23 A. Yes.

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1 Q. Okay. Do you recall filling this application
2 form out?

3 A. Barely.

4 Q. Is your signature on the last page of
5 Exhibit 3 certified that all the answers that
6 were made by you in the application were true
7 and complete to the best of your knowledge?

8 A. Yes.

9 Q. Did you consent when you signed the
10 application form to taking a physical
11 examination, drug screen -- drug screen and
12 such future physical examinations and drug
13 screens as may be required by Enterprise?

14 A. Yes.

15 Q. And you understood that?

16 A. Yes.

17 Q. Okay. Did you also understand when you signed
18 the application that your employment with
19 Enterprise may be terminated with or without
20 cause and with or without notice at any time
21 at the option of Enterprise?

22 A. Yep.

23 Q. Okay. The second page of this Exhibit 3 lists

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1 employment for the last 10 years --

2 information for employment for the past 10

3 years; do you see that?

4 A. Yes.

5 Q. Did you fill this information in?

6 A. Yes.

7 Q. Okay. Did you start driving in California?

8 A. Define "driving". You mean truck?

9 Q. Yeah.

10 A. Or just driving for a living?

11 Q. Driving truck.

12 A. No, I did not. I went to school there.

13 Q. Where were you living when you first started

14 driving a truck for a living?

15 A. California.

16 Q. What year was that?

17 A. That was in 1998.

18 Q. So your first job driving for -- for somebody

19 was Marten Transport?

20 A. Correct.

21 Q. Okay. And after Marten Transport you worked

22 at Relco Systems?

23 A. Correct.

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1 Q. When you started with Marten Transport you
2 were living in California?

3 A. Yes.

4 Q. Did Cindy start with you at the same time with
5 Marten Transport?

6 A. No.

7 Q. You started as a single driver?

8 A. I started as a solo and then got to be a
9 certified trainer so I could train her.

10 Q. Okay. And that was all with Marten?

11 A. Yes.

12 Q. Between 1998 and 2001?

13 A. Mm-hmm.

14 Q. Were you living in California then?

15 A. Yes.

16 Q. Were you living in California during those
17 years?

18 A. We moved out of California in 1998.

19 Q. Okay. Where did you move to?

20 A. New York.

21 Q. Your Lockwood address that you gave us this
22 morning?

23 A. No.

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1 Q. How many places have you lived in New York?

2 A. Three.

3 Q. Three places, okay. Before you lived at 195
4 Parker Road, where did you live in New York
5 State?

6 A. 1778 Union Center Main Highway, Endicott, New
7 York.

8 Q. Before you lived on the Union Center Main
9 Highway property, where did you live?

10 A. 622 Edson Road, Number 85 and that was in
11 Endicott as well.

12 Q. Were you renting at the Edson Road?

13 A. No.

14 Q. You owned it?

15 A. Yes.

16 Q. Was it a mobile home lot?

17 A. Yes, it was.

18 Q. Do you still own the mobile home today?

19 A. Nope.

20 Q. How long has it been since you lived in a
21 mobile home?

22 A. About 16 years roughly.

23 Q. You live in a single-family home today?

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1 A. Yes.

2 Q. Do you own that home?

3 A. Yes.

4 Q. When did you purchase it?

5 A. 2006.

6 Q. Is there a mortgage on the home today?

7 A. Yes, there is.

8 Q. Was there a mortgage on the home in October
9 2012?

10 A. Yes.

11 Q. When you were terminated from Enterprise?

12 A. Yes.

13 Q. Have you ever been late on your mortgage
14 payment?

15 A. No.

16 Q. When you lived on Union Center Main Highway in
17 Endicott were you renting or owning?

18 A. Owning.

19 Q. You had your mobile home there?

20 A. No, that was a house.

21 Q. That was a house. Who else lives with you
22 today?

23 A. Just Cindy.

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1 Q. At the time you were terminated from
2 Enterprise in October 2012 who was living at
3 your house?

4 A. I had a daughter Elizabeth.

5 Q. Where's Elizabeth living today?

6 A. On her own.

7 Q. Does she live in --

8 A. Owego.

9 Q. New York State?

10 A. Yeah, Owego.

11 Q. What's her address?

12 A. I don't know her address.

13 Q. Is Elizabeth your youngest child?

14 A. Yes.

15 Q. How many children do you have?

16 A. Five.

17 Q. All daughters?

18 A. Yes.

19 Q. You have a daughter named Erica?

20 A. Yes.

21 Q. Where does she live today?

22 A. Denver, Colorado.

23 Q. Is her last name Nava?

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1 A. Yes.

2 Q. What's the street address for Erica's address?

3 A. I don't know it.

4 Q. In October 2012 when you got terminated from
5 Enterprise was Erica living in New York State?

6 A. Yes.

7 Q. Where was she living at that point in time?
8 Endicott?

9 A. No, I'm thinking Binghamton.

10 Q. What does Erica do for a living?

11 A. She works for Lockheed Martin.

12 Q. What's the last year that Erica was living
13 with you, residing in the same house?

14 A. Jeez, probably 2006 roughly.

15 Q. You have a daughter named Nicole?

16 A. Yes.

17 Q. Where is she living today?

18 A. I'm not sure.

19 Q. In New York State?

20 A. Pennsylvania usually.

21 Q. How long since she lived with you at your
22 residence?

23 A. 11 years ago would be 2006, so Erica would

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1 have moved out about 2008 then.

2 Q. What does Nicole do for a living?

3 A. I'm not sure.

4 Q. When you were a trainer at Marten, what were
5 you doing, like what was your training work?

6 A. Well, I went through a course to train Cindy
7 after being a solo driver for six months so
8 they put me through a course in Wisconsin
9 about skid pad-type training, so that I could
10 train Cindy when she came on.

11 Q. Skid pad has to do with loading and unloading?

12 A. No, skid pad has to -- it's basically a big
13 wet concrete slab they get wet and they lock
14 the truck up and you got to deal with it.
15 Basically skills tests and --

16 Q. Did you train anyone else at Marten besides
17 Cindy?

18 A. No.

19 Q. When you trained Cindy for Marten did you have
20 to teach her about the company employment
21 policies?

22 A. No, they usually did that in orientation those
23 things are covered.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. Mm-hmm. How long did you work for Enterprise?

2 A. About 10 and a half years.

3 Q. Was that continuous?

4 A. Yes.

5 Q. There never was a time that you stopped
6 working for Enterprise in those 10 and a half
7 years?

8 A. Nope.

9 Q. Would you mind marking this for us?

10

11 The following was marked for identification:

12 Exhibit 4 Statement to Enterprise

13

14 **BY MR. BORON:**

15 Q. Okay, sir. I'm showing you what's marked as
16 Exhibit 4 for today's deposition. For the
17 record it's a single-page document. In the
18 bottom right-hand corner it says ENT with the
19 number 9. Have you seen a copy of this
20 before, sir?

21 A. No.

22 Q. No. Is that your signature at the bottom of
23 the page?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. Yes, it is.

2 Q. Okay. Did you review the document before you
3 signed it?

4 A. Yeah.

5 Q. Okay. Going across the top there's reference
6 to what looks like your wife's name; do you
7 see that?

8 A. Okay.

9 Q. And there's a phone number there, do you
10 recognize that phone number?

11 A. That looks like an Enterprise number.

12 Q. It looks like an Enterprise number to you?
13 607 --

14 A. Oh, no, no, no. No, I don't recognize that
15 number.

16 Q. Okay. Do you know who the Laura person is
17 that this was being sent to the attention of?

18 A. Yes.

19 Q. Who's that?

20 A. The secretary at Enterprise.

21 Q. What's Laura's last name?

22 A. I don't remember.

23 Q. Why was this document prepared and signed by

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 you?

2 A. Because when they hire you they look at DAC
3 services to look at, say, accidents on your
4 history and Marten claimed that the little
5 flimsy guard thing that I hit was an accident
6 and they wanted me to basically put in writing
7 and basically describe it because it was that
8 and a deer that I hit they classified as an
9 accident as well.

10 Q. When you say "DAC," is that an acronym for
11 something?

12 A. Yeah, they don't use it anymore now. It's --
13 Jesus Christ, CSA, I know that. It's a
14 different form now. It's called something
15 different now.

16 Q. Well, was it D-A-K or D-A-C that you referred
17 to?

18 A. D-A-C.

19 Q. D-A-C?

20 A. Yeah.

21 Q. And that's a database that contains records of
22 drivers' histories?

23 A. It's for companies to upload the drivers'

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 histories, yeah.

2 Q. Is it a database that only had information
3 about accidents or did it have information
4 about other things related to the driver, like
5 their drug test results?

6 A. I would imagine it has that as well.

7 Q. And what's the equivalent of DAC today?

8 A. I'm not sure of the name today. I think it's
9 just CSA. I think they call it CSA.

10 Q. So Enterprise was asking you to explain things
11 on your DAC report?

12 A. Yep.

13 Q. When you applied at ICX was a CSA report run
14 on you?

15 A. Yeah.

16 Q. Did you have to explain the accident in North
17 Dakota in 2012?

18 A. Yeah, I already explained it to them.

19 Q. Okay. But that showed up on the report?

20 A. Yeah.

21 Q. Did you see the report?

22 A. No, I don't see the reports.

23 Q. Okay. Did you have to prepare a document like

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 this for ICX at the time of your application
2 about the information on your CSA report?

3 A. No.

4
5 The following was marked for identification:
6 Exhibit 5 Enterprise Transportation
7 Company Position Description
8 dated 3/18/02

9 (Recess taken)

10
11 **BY MR. BORON:**

12 Q. Okay. We're back on the record after a break.
13 Because you haven't done depositions before
14 I'm going to remind you every time we come
15 back you won't be sworn in again, you're just
16 on your sworn testimony and it continues on
17 through every break, if we take a lunch break,
18 et cetera, every time you return please remind
19 yourself you're under oath to give accurate
20 and true testimony; do you understand that?

21 A. I do.

22 Q. Okay. So we left off, I was asking you about
23 your applications with -- your application to

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 work at Enterprise in 2002. So I'm going to
2 show you Exhibit 5, sir. Exhibit 5 is the --
3 for the record is a one-page document. At the
4 top of the document it says Enterprise
5 Transportation Company Position Description,
6 correct?

7 A. Yes.

8 Q. And on the bottom right-hand corner it says
9 ENT 8, correct?

10 A. Yes.

11 Q. Does your signature appear on this form?

12 A. Yes, it does.

13 Q. Okay. What is this form besides the position
14 description what were you signifying when you
15 signed this form?

16 A. That we could do the job that's described
17 above.

18 Q. Do you see in the position requirement section
19 there's one, two, three, four, five?

20 A. Yes.

21 Q. Number four says familiar with and comply with
22 Enterprise Transportation Company employee
23 operating, safety and environment procedures

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1 and standards. Do you see that?

2 A. Yes.

3 Q. Okay. So at the point in time you signed this
4 were you certifying that you were familiar
5 with those standards?

6 A. Yes.

7 Q. At this point in time had you been trained in
8 some way by Enterprise already?

9 A. I believe so.

10 Q. Did they --

11 A. They did put us through training. I'm not
12 sure exactly when our release date was.

13 Q. Where did the training occur?

14 A. In Parsippany.

15 Q. Who was the person that put the training on?

16 A. His name was John, another John. Reddy --
17 John Reddy.

18 Q. Okay. He's the person who signed above your
19 signature?

20 A. I guess so, yep.

21 Q. Was his title terminal manager at that point
22 in time?

23 A. Yes, he was.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. Okay. At the terminal, there was a manager
2 and then there was the person who managed you,
3 correct, John Frezzo?

4 A. No.

5 Q. No.

6 A. Two different terminal managers, two separate
7 times. Basically when we started with
8 Enterprise John Reddy was the terminal manager
9 for about five years and then John Frezzo took
10 over.

11 Q. Okay. So was John Reddy the person that hired
12 you?

13 A. Yes.

14 Q. Had you known John Reddy before you applied to
15 Enterprise?

16 A. No.

17 Q. Does John Reddy still work at Enterprise?

18 A. No.

19 Q. Where does he work?

20 A. He's retired.

21 Q. Have you spoken to him since he retired?

22 A. No.

23 Q. When did he retire?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. A couple years ago.

2

3 The following was marked for identification:

4 Exhibit 6 Illegal and unauthorized
5 items at operational
6 facilities document dated
3/18/02

6

7 **BY MR. BORON:**

8 Q. Mr. Horn, showing you what's been marked as
9 Exhibit 6 for this deposition.

10 **MR. MAZZOLA:** Are you moving off of 5?

11 Q. Yes. For the record, Exhibit 6 is also a
12 one-page exhibit. Does Exhibit 6 also have
13 your signature at the bottom?

14 A. Yes, it does.

15 Q. What's the date next to your signature at the
16 bottom?

17 A. 3/18/2002.

18 Q. Okay. Can you look back at Exhibit 5 and tell
19 me the date of the signature on Exhibit 5?

20 A. 3/18/2002.

21 Q. Okay. Same date. Is it your memory that
22 these forms were provided to you and you
23 signed them on the same date, March 18, 2002?

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1 A. Yes.

2 Q. Okay. Did you review this document before you
3 signed it?

4 A. At the time, yeah.

5 Q. You have -- did you have any trouble reading
6 or understanding what was in the document?

7 A. Not to my knowledge, no.

8 Q. Okay. I'm going to count down from the top of
9 the document, one, two, three, four, five, to
10 the sixth paragraph. Do you see where the
11 sixth paragraph begins Off the Job?

12 A. Okay.

13 Q. Do you see those words?

14 A. Yep.

15 Q. You do, okay. So there's reference to off the
16 job illegal drug use in that paragraph,
17 correct?

18 A. Correct.

19 Q. And it says it could be caused for
20 disciplinary action up to and including
21 discharge, correct?

22 A. Correct.

23 Q. Did you understand that from the point in time

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1 that you signed this document to be the case
2 throughout your entire period of employment at
3 Enterprise?

4 A. Correct.

5 Q. That off the job illegal drug use would be
6 caused for disciplinary action, including
7 discharge?

8 A. Yes.

9 Q. Did that policy of the company ever change
10 during the time you worked there for the 10
11 and a half years?

12 A. No.

13 Q. You see two photographs below that where the
14 second sentence states, as an employee, you
15 have a responsibility to determine whether or
16 not the use of illegal prescription may
17 present a safety risk at work?

18 A. Correct.

19 Q. Okay. Did you ever consult with a physician
20 regarding the product that you purchased from
21 Dixie and took in October of 2012?

22 A. No.

23 Q. Did you consult with anybody about whether

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1 that was illegal -- a legal product for you to
2 take?

3 A. No. I did research on YouTube and on the
4 Internet.

5 Q. When you signed the certification of
6 Exhibit 6, it says I have read and understand
7 this policy, doesn't it?

8 A. Yep.

9 Q. Just above your signature, okay. And you
10 don't deny that, correct?

11 A. Correct.

12

13 The following was marked for identification:

14 Exhibit 7 Acknowledgement of receipt
15 dated 3/18/02

16 **BY MR. BORON:**

17 Q. Before we go on to Exhibit 7 I just want to
18 ask you a question about friendships that you
19 made with folks that work for Enterprise. Do
20 you still have friends that work at Enterprise
21 as you sit here today?

22 A. No.

23 Q. Okay. Showing you Exhibit 7. Exhibit 7 for

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1 the record is another one-page exhibit, bottom
2 right-hand corner says ENT 201. Do you see
3 that?

4 A. Yes.

5 Q. Okay. Form is labelled Acknowledge of
6 Receipt, correct?

7 A. Correct.

8 Q. Does your signature appear on this form as
9 well?

10 A. Yes.

11 Q. With that same March 18, 2002 date that we saw
12 on Exhibits 5 and 6?

13 A. Correct.

14 Q. Okay. You were signing all these forms on the
15 same day?

16 A. Yes.

17 Q. This was part of your training with
18 Enterprise?

19 A. I believe it was part of our initial
20 acceptance.

21 Q. Okay. And this signature acknowledges receipt
22 of the driver's safety rules, policies, and
23 procedures?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. Correct.

2 Q. What did that consist of, the driver's safety
3 rules, policies, and procedures?

4 A. Pretty much just obey all laws and --

5 Q. Well, were you given a handbook or a manual or
6 something like that?

7 A. We have the Federal Motor Carrier Safety Book.
8 I mean, it's got tons of codes in there, you
9 know, basically.

10 Q. Tell me about that book that you just
11 described.

12 A. It basically has all the laws in it in
13 sections.

14 Q. All the laws that would apply to truck
15 drivers?

16 A. Yes.

17 Q. Okay. Including the drugging -- drug testing
18 laws?

19 A. Yeah, they're in there.

20 Q. The laws that describe what kind of substances
21 you're prohibited from putting in or using
22 with your body?

23 A. I would imagine.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. Okay. Including marijuana or THC, correct?

2 A. I don't know if it's listed that way in there,
3 but yeah, illegal substances. Yeah.

4 Q. Okay. Were you responsible as a driver at
5 Enterprise to know what was in the driver
6 safety rules, policies, and procedures?

7 A. Pretty much, yeah.

8 Q. Okay. There's a reference about five lines --
9 it is five lines down in that acknowledgment
10 to drug and alcohol, what does that refer to?

11 A. Drug and alcohol.

12 Q. Well, do you remember a specific policy that
13 that referred to or specific regulation or
14 rule?

15 A. I don't remember specific regulation or rule,
16 you know, just kind of a blanket cause, you
17 know, you're not supposed to drink while you
18 drive and do drugs. I mean --

19 Q. Do you see the name that's signed below yours?

20 A. Yep.

21 Q. Laura Delaney?

22 A. Delaney, yep.

23 Q. Is that the last name of the secretary at

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Enterprise that you had sent some other
2 paperwork to?

3 A. Yes.

4 Q. Okay. Have you had any contact or
5 correspondence with Laura Delaney since you
6 left Enterprise?

7 A. No.

8 Q. Do you know where she works today?

9 A. No.

10

11 The following was marked for identification:

12 Exhibit 8 Enterprise Transportation
13 Company Acknowledgement of
14 Receipt dated 5/13/02

15 **BY MR. BORON:**

16 Q. Showing you what's been marked as Exhibit 8
17 for today's deposition. For the record,
18 Exhibit 8 is another single-page document. In
19 the bottom right-hand corner it says ENT 176,
20 correct?

21 A. Correct.

22 Q. Very top of the page says Enterprise
23 Transportation Company, correct?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. Correct.

2 Q. And this is a -- an acknowledgment that you
3 signed; is that correct?

4 A. Yes.

5 Q. Okay. Your signature appears in the bottom.
6 It says I, Douglas Horn, acknowledge receipt
7 of the Company Driver's Orientation Manual on
8 5/13/02, correct?

9 A. Correct.

10 Q. All right. Do you see item number 19 on the
11 list?

12 A. Yes.

13 Q. It says employee physical and drug testing pay
14 policy.

15 A. Okay.

16 Q. What was that policy all about?

17 A. I'm assuming that we had to pay for our own
18 physicals. I have no idea.

19 Q. How did it work at Enterprise when you had to
20 do random drug tests?

21 A. They would just tell us we had a random drug
22 test and we would go around the corner and
23 drug test.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. What do you mean "right around the corner"?

2 A. Well, wherever we were we would go to a local
3 place.

4 Q. Okay. Would they pay you for your time that
5 was spent while the drug test was being done?

6 A. I think if it was over two hours, yeah.

7 Q. Is that part of the drug testing pay policy?

8 A. That would make more sense, yeah.

9 Q. Okay. How would you be notified about the
10 fact that you had to have a test done?

11 A. They'd call us or if we came in a terminal
12 they'd tell us we were selected for a random.

13 Q. Okay. Did you have a time limit that you had
14 to give your sample by?

15 A. Yes.

16 Q. Was it always a urine sample?

17 A. Yes.

18 Q. Did they ever take hair sample?

19 A. No.

20 Q. What was the time limit for giving the urine
21 sample?

22 A. I think you had to do it within two hours.

23 Q. When you say you think you had to do it?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. Well, it's Federal law.

2 Q. Your understanding is that Federal law is once
3 you're notified you have --

4 A. Yeah, you have two hours and you have to be
5 drug tested otherwise it's considered as a
6 fail.

7 Q. Okay. And are there any exceptions to that?
8 In other words, if you can't get to a place
9 within two hours?

10 A. Yeah, there are exceptions.

11 Q. Okay. Were any of your urine tests that were
12 done while you worked at Enterprise done right
13 at the New Jersey facility?

14 A. Not at the terminal, but there were places
15 around the corner from New Jersey that --
16 yeah.

17 Q. Okay. Where was the test administered that
18 you failed in 2012?

19 A. That was in Philadelphia, I believe, or
20 outside of Pittsburgh, excuse me.

21 Q. You were in Pennsylvania at the time you gave
22 it --

23 A. Yeah.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. The sample?

2 A. Yeah, I was at the Coraopolis terminal.

3 Q. Is that another terminal owned by Enterprise?

4 A. Correct.

5 Q. Were all of your drug tests with Enterprise --
6 were you notified about all of the drug tests
7 that you had with Enterprise when you were at
8 a terminal?

9 A. Yeah, or right before we got there.

10 Q. Okay. Besides the drug test from 2012 that
11 was done in Pennsylvania, were all the other
12 drug tests done in New Jersey?

13 A. I couldn't say. No, I've done some in Texas.

14 Q. With Enterprise?

15 A. Yeah. Because we have terminals there.

16

17 The following was marked for identification:

18 Exhibit 9 Enterprise Transportation
19 Company Houston, Texas
20 Training Delivered by
21 Employer dated 5/17/02

22 **BY MR. BORON:**

23 Q. Was the terminal owned by Enterprise that you
operated out of, the terminal Avenel,

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A-V-E-N-E-L, New Jersey?

2 A. Yes.

3 Q. Okay. Did you ever operate out of another
4 terminal while you worked at Enterprise?

5 A. No.

6 Q. So that would be -- we could call that a home
7 base; is that a good way to describe?

8 A. Pretty much, yeah. I mean, we worked out of
9 other terminals, but we were assigned to
10 Avenel.

11 Q. Okay. And that's where John Frezzo worked?

12 A. Yes.

13 Q. That's where the other John who was your
14 previous supervisor worked?

15 A. Correct.

16 Q. Okay. And did there come a point in time when
17 Keenan purchased that terminal from
18 Enterprise?

19 A. After I was terminated.

20 Q. Okay. That was after you no longer worked at
21 Enterprise?

22 A. Yes.

23 Q. Okay. Did you apply at Keenan?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. Yes, I did.

2 Q. When they took over?

3 A. Yes, I did.

4 Q. Okay. What year was that?

5 A. 2013.

6 Q. Okay. Did you fill out an application for
7 Keenan?

8 A. Yes, I did.

9 Q. Do you still have a copy of the application
10 you filled out to Keenan?

11 A. I don't think so.

12 Q. Did you get a written reply from Keenan to
13 your application?

14 A. No.

15 Q. Did John Frezzo continue on and work for
16 Keenan after they bought the terminal?

17 A. Yes, he did.

18 Q. Okay.

19 A. He's the one that suggested I put the
20 application in.

21 Q. Mm-hmm. Was his job with Keenan the same as
22 it was with Enterprise?

23 A. It was.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. Okay. I'm showing you what's marked as
2 Exhibit 9 for today's deposition. Unlike the
3 last four exhibits, Exhibit 9 is made up of
4 four pages, correct -- four pages stapled
5 together?

6 A. Correct.

7 Q. Okay. In the bottom right-hand corner of
8 those four pages we see references to page
9 numbers ENT 178 through ENT 181, correct?

10 A. Correct.

11 Q. All right. So at the top of the first page
12 there's a reference to Enterprise
13 Transportation Company and Training. That was
14 delivered by the employer, this training that
15 you attended?

16 A. Yes.

17 Q. Did you go to Cincinnati, Ohio for the
18 training?

19 A. Yes.

20 Q. And Cindy went with you, as well?

21 A. Correct.

22 Q. She participated in the same training you did?

23 A. Yes.

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 Q. Okay. How long did the training last?

2 A. Cincinnati was pretty much orientation class
3 and then we went back to Parsippany at that
4 time and then went on-the-job training with a
5 trainer.

6 Q. How long were you in Cincinnati for training?

7 A. I think about four days.

8 Q. Okay. Do you see there's an agenda on the
9 first page of Exhibit 9?

10 A. Correct.

11 Q. It seems to indicate a week long agenda?

12 A. Yep.

13 Q. On Wednesday, May 15, 2002 was there 60
14 minutes of DOT drug and alcohol awareness
15 training?

16 A. Yes.

17 Q. What was the nature of that training?

18 A. Just videos regarding the rules and laws
19 governing alcohol.

20 Q. Were those rules and laws that you were
21 already familiar as -- familiar with as a
22 trucker?

23 A. Yeah, they're pretty much the same thing they

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1 make you watch over and over.

2 Q. Mm-hmm. Was there any lecture component to
3 the drug and alcohol awareness training?

4 A. There was a safety manager there that gave
5 commentary and did the whole orientation,
6 yeah.

7 Q. Okay. Turning to the third page of the
8 exhibit, which is ENT 180, your signature
9 appears on this page, correct?

10 A. Correct.

11 Q. What were you certifying when you signed this
12 page?

13 A. Substance abuse training.

14 Q. What do you mean by that, you're certifying
15 that you received the substance abuse
16 training?

17 A. Correct.

18 Q. Do you recognize the name of the person who
19 signed below your signature on that page?

20 A. Yes, I do.

21 Q. Who is that person?

22 A. That's John McConiville, safety manager.

23 Q. With Enterprise?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. Mm-hmm.

2 Q. Okay. Have you spoken with John McConiville
3 about this lawsuit?

4 A. No.

5 Q. Turning to the last page of Exhibit 9, another
6 page that has your signature, correct?

7 A. Correct.

8 Q. Did you write your name above your signature
9 as well?

10 A. Yes, I did.

11 Q. Okay. Did your employee number ever change at
12 Enterprise, the 10063 employee number that's
13 filled in the box there?

14 A. No, it never changed.

15 Q. Okay. Did you sign this form on May 17th,
16 2002?

17 A. Yes.

18 Q. What were you acknowledging when you signed
19 the form?

20 A. That we had gotten and received the drug and
21 alcohol policies, orientation.

22 Q. Well, specifically the acknowledgement says
23 that if -- the policies and procedures have

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1 been explained to you?

2 A. Correct.

3 Q. Did that happen during the training?

4 A. Yep.

5 Q. Okay. It says I have received and have read a
6 copy of the policy. Did you do that?

7 A. Correct.

8 Q. It says I understand the policy and agree to
9 all the requirements obtained within; is that
10 a true statement?

11 A. Yes.

12 Q. It says I understand the compliance with the
13 drug and alcohol misuse in Enterprise's
14 Transportation Company policy and procedure.
15 There's a condition of employment with the
16 policy. I understand that a disciplinary
17 action up to and including termination will be
18 taken if I'm found in violation of the policy.

19 A. Correct.

20 Q. You understood all that?

21 A. Yep.

22 Q. Did you understand that through all the entire
23 10 and a half years you worked at Enterprise?

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1 A. Yes.

2

3 The following was marked for identification:

4 Exhibit 10 Acknowledgement of receipt
5 dated 4/17/03

6 **BY MR. BORON:**

7 Q. Mr. Horn, I'm showing you what's been marked
8 as Exhibit 10 for today's deposition. For the
9 record, Exhibit 10 is a single page, correct?

10 A. Correct.

11 Q. At the bottom right-hand corner it says ENT
12 167, correct?

13 A. Yes.

14 Q. Your signature appears on this page?

15 A. Yes.

16 Q. Is that your signature, sir?

17 A. Yes, it is.

18 Q. Okay. You notice the date next to your
19 signature is not in the year 2002 this time,
20 it's 2003, correct?

21 A. Correct.

22 Q. All right. What were you acknowledging when
23 you signed this form?

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1 A. Some kind of disciplinary policy and
2 procedure.

3 Q. Why were you being given a disciplinary policy
4 and procedure on that date?

5 A. Probably recertification.

6 Q. Were you in any sort of trouble or having any
7 problem with your job at that point in time?

8 A. No.

9 Q. So this would be more of a routine training
10 that you went through more than likely?

11 A. Yeah.

12 Q. Okay.

13 A. I'm not sure what it is.

14 Q. Okay. What was the disciplinary policy and
15 procedure? In other words, physically was it
16 a manual? A set of papers?

17 A. It just was -- if this was some kind of
18 recertification it more likely was a video --
19 short video that you've watched and then
20 basically sign that you watched it.

21 Q. It says that you're acknowledging receipt of a
22 disciplinary policy or procedure. Do you
23 recall there being a written disciplinary

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1 policy and procedure?

2 A. There could have been a test with it as well.
3 Usually there is.

4 Q. But do you recall there being a disciplinary
5 policy and procedure at Enterprise that you
6 were given?

7 A. Not in 2003. I don't remember any of this.

8 Q. Whose signature is below yours?

9 A. Looks like John Reddy.

10 Q. John Reddy, your supervisor at the time?

11 A. Correct.

12 Q. Do you have any reason to deny that you
13 received the disciplinary policy and
14 procedures which detail the disciplinary
15 action that will or could be taken for failure
16 to follow established company policies and
17 procedures?

18 A. No.

19

20 The following was marked for identification:

21 Exhibit 11 Enterprise Products Company
22 and DOT Drug and Alcohol
23 Policy Summary

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1 **BY MR. BORON:**

2 Q. Showing you Exhibit 11 for this deposition,
3 sir. For the record, Exhibit 11 consists of
4 two pages stapled together. In the bottom
5 right-hand corner they say ENT 469 and ENT
6 470, correct?

7 A. Correct.

8 Q. And these two pages have a label in the upper
9 right-hand corner that say company DOT Drug
10 and Alcohol Policy Summary, correct?

11 A. Correct.

12 Q. And this is from Enterprise, your former
13 employer?

14 A. Correct.

15 Q. And you were given a copy of this drug -- I'm
16 sorry, Company and DOT Drug and Alcohol Policy
17 Summary?

18 A. I'm sure I did, yes.

19 Q. Okay. Does this look familiar to you?

20 A. Not really, no.

21 Q. You see on the form on the first page of
22 Exhibit 11 where it says -- there's a heading
23 that says Prescription Medication,

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1 over-the-counter and then (OTC) products?

2 A. Correct.

3 Q. Okay. Do you see the reference to employees
4 are expected to review warning labels and
5 report such use of all medications to each of
6 their medical practitioners so each can make a
7 good faith judgement that the used substance
8 is either prescribed or authorized dosage is
9 consistent with the safe performance of their
10 duties; do you see that?

11 A. Yes.

12 Q. And did you understand that to be part of the
13 policy of Enterprise with respect to drug and
14 alcohol?

15 A. Yeah.

16 Q. What was your own personal practice with
17 respect to reviewing warning labels on drugs,
18 whether they were prescribed or
19 over-the-counter before taking them?

20 A. Well, I would go by the warning.

21 Q. So your standard operating procedure was to
22 review the label?

23 A. Pretty much, yeah.

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1 Q. And would you contact your doctor if you
2 didn't understand something on the label?

3 A. Yes, it happened. Yeah.

4 Q. Did that ever happened?

5 A. No.

6 Q. You understood everything on every label for
7 everything you were prescribed or took an
8 over-the-counter product?

9 A. Pretty much, yeah.

10 Q. Okay. Do you see down below in the left-hand
11 corner of the first page of Exhibit 11?

12 A. Correct.

13 Q. Prohibited substances, there's a label that
14 says DOT and first prohibited substance listed
15 there is marijuana?

16 A. Correct.

17 Q. And then just up to the top right-hand column
18 of the first page which is still ENT 469 it
19 says N/DOT, marijuana's listed there as well?

20 A. Correct.

21 Q. Okay. That's for the non-DOT policy of
22 Enterprise as oppose to the DOT's own policy,
23 correct?

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1 A. Okay.

2 Q. Well, is it correct?

3 A. Yes. Yes.

4 Q. Yes. Do you see in that list of non-DOT
5 there's more than marijuana listed. It says
6 any mood or mind altering substances and then
7 in parenthesis it says (herbal, synthetic,
8 manufactured)?

9 A. Okay. Yeah, I see it.

10 Q. Okay. Do you deny that that was part of
11 Enterprise's policy with respect to drugs and
12 alcohol?

13 A. No, that's their policy.

14 Q. Okay. Did you understand that throughout the
15 time you worked at Enterprise that the company
16 reserves the right to test for more drugs at
17 lower threshold levels and take lower levels
18 than required by DOT?

19 A. Correct.

20 Q. I'm directing your attention now to the second
21 page of Exhibit 11 in the bottom right-hand
22 corner. This is ENT -- page ENT 470. Do you
23 see where it says contact information?

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1 A. Correct.

2 Q. And there is a drug and alcohol
3 compliance/designated employer representative
4 listed there, a person listed as Shana Vaught?

5 A. Okay. I see it.

6 Q. In 2012 in October when you took the Dixie
7 product, was Shana Vaught the drug and alcohol
8 compliance designated employer representative?

9 A. I don't know.

10 Q. Was there a drug and alcohol compliance
11 designated employer representative at that
12 time?

13 A. I don't know.

14 Q. Did you ever refuse to submit to a drug test?

15 A. No.

16 Q. In your entire lifetime?

17 A. In my entire life, no.

18 Q. Okay. And how many drug tests did you provide
19 or participate in while you worked at
20 Enterprise?

21 A. I'm not sure.

22 Q. Was it less than 10?

23 A. Yeah, I would say so.

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1 Q. So over 10 and a half years you were being
2 tested on average less than one year?

3 A. Yeah, about. Yeah.

4 Q. Okay. And were you also tested for drugs at
5 prior employers like Marten?

6 A. Yes.

7 Q. Did they test more frequently than Enterprise
8 or at about the same rate?

9 A. I don't recall honestly.

10 Q. Okay. Have you gone through drug testing for
11 ICX?

12 A. Yes.

13 Q. Random drug testing?

14 A. Yes.

15 Q. Unannounced drug testing?

16 A. Yes.

17 Q. How many times?

18 A. Just once.

19 Q. Once. What was the result of that test?

20 A. It was negative.

21 Q. Okay.

22 A. Otherwise I'd be terminated.

23

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1 The following was marked for identification:

2 Exhibit 12 Personnel Action Request
3 dated 8/18/11

4 **BY MR. BORON:**

5 Q. Did there come a point in 2010 while you were
6 employed at Enterprise that you applied for a
7 different position within the company?

8 A. I believe I did, yes.

9 Q. Okay. What kind of position was that?

10 A. The crude oil division, Texas.

11 Q. You were going to be a driver for crude oil
12 division if you got the position, correct?

13 A. Correct.

14 Q. But you did not get the position, correct?

15 A. Correct.

16 Q. Did you interview for this position?

17 A. No.

18 Q. Did you fill out paperwork and submit it
19 in-house for the position?

20 A. Yes, I did.

21 Q. Were you given a reason why you were not hired
22 for that position?

23 A. No.

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1 Q. Before 2010 had you made any other
2 applications within the company -- you know,
3 in-house applications for other positions?

4 A. No.

5 Q. Was this the one and only application you ever
6 made as an employee of Enterprise in house for
7 different types of a job?

8 A. That was pretty much the only time. I think
9 we may have submitted the app twice on two
10 different occasions, but I'm not sure.

11 Q. The app for the same job?

12 A. Crude oil driver, yep.

13 Q. And was an application submitted for Cindy at
14 the same time?

15 A. Yes.

16 Q. So you both got turned down in 2010?

17 A. We never got a response.

18 Q. Never got a response?

19 A. Yep.

20 Q. Do you remember any particular person at
21 Enterprise that you interacted with with
22 respect to that application?

23 A. It was all done online so there was no

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1 interaction with anybody.

2 Q. Okay. Did your supervisor -- was your
3 supervisor John Frezzo at that point in time?

4 A. He was our -- yes.

5 Q. Did he recommend you for that position?

6 A. No.

7 Q. Did he have any involvement in trying to help
8 you get that position?

9 A. No.

10 Q. Did you list him as a reference when you made
11 that application?

12 A. I might have.

13 Q. You don't recall?

14 A. Yeah, I don't recall.

15 Q. I'm showing you what's marked as Exhibit 12
16 for today's deposition. For the record,
17 Exhibit 12's also a single page. In the
18 bottom right-hand corner it says ENT 3; do you
19 see that?

20 A. Yes, I do.

21 Q. Okay. At the top of the page it says
22 Personnel Action Request; do you see that?

23 A. Yes.

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1 Q. In the upper right-hand corner there's a box
2 that's been checked that says termination; do
3 you see that?

4 A. Yes.

5 Q. And then there's an effective date that says
6 August 18th, 2011; do you see that?

7 A. Yes.

8 Q. And your name appears in the employee's name
9 box, correct?

10 A. Correct.

11 Q. Is this your handwriting on this form?

12 A. No.

13 Q. No. Do you recognize the handwriting on the
14 form?

15 A. It looks like John Frezzo's.

16 Q. Okay. Do you know why John filled this form
17 out?

18 A. Yes, we were on vacation and decided to go
19 work for another company local, but 24 hours
20 later it didn't work out, so we withdrew our
21 termination.

22 Q. What was the other company that you were going
23 to start working at?

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1 A. It was called Struble.

2 Q. Can you spell that?

3 A. S-T-R-U-B-L-E.

4 Q. Did you get hired by Struble?

5 A. We did.

6 Q. Is this before or after they did a drug test
7 at Struble?

8 A. You have to do a pre-employment drug test
9 before you get hired.

10 Q. Okay. Did you do a pre-employment drug test
11 at Struble?

12 A. Yes.

13 Q. And after that drug test result came back you
14 got hired by Struble?

15 A. Correct.

16 Q. Did you do any work for Struble?

17 A. We did, half a day.

18 Q. When you say Struble was local, what do you
19 mean by "local"?

20 A. About 20 minutes from where we live they were
21 in the gas fields doing sand for natural gas.

22 Q. Do you have any records related to your
23 application to Struble?

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1 A. No.

2 Q. Do you have any records related to what your
3 compensation packet would have been with
4 Struble?

5 A. No.

6 Q. What's your recollection of what your
7 compensation package would have been with
8 Struble?

9 A. Well, they kind of lied to us, that's why it
10 didn't work out. Because they told us we
11 would make X amount of dollars per load and it
12 wasn't even half of what they said, so that's
13 why we left.

14 Q. How did you find out it was half of what they
15 said?

16 A. Talking to the other drivers.

17 Q. When you say "other drivers," are you
18 referring to other drivers at Struble?

19 A. Struble drivers and then I called the owner to
20 confirm it.

21 Q. What was the owner's name?

22 A. I don't remember. His last name was Struble.

23 Q. Did you get a W-2 from Struble that year?

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1 A. I'm sure I did, yes.

2 Q. So they paid you for the half day of work?

3 A. Yes.

4 Q. Did they pay you for anything else?

5 A. No.

6 Q. No signing bonus?

7 A. No.

8 Q. Have you ever heard of a truck driver getting
9 a signing bonus?

10 A. Yes.

11 Q. Did you ever receive a signing bonus when you
12 started with a place?

13 A. With Enterprise.

14 Q. I thought I asked you earlier if you got a
15 signing bonus with Enterprise?

16 A. Yeah.

17 **MR. HOUSH:** Object to form.

18 A. I guess we did, yeah.

19 Q. You did?

20 A. I believe so. Yeah, we did.

21 Q. I could be wrong, too. I might have been
22 asking about ICX.

23 **MR. HOUSH:** Object to form.

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1 A. Right. Those are the things I don't think
2 about too often, so it's like --

3 Q. Now you had to contact Enterprise when you
4 were going to start with Struble and let
5 Enterprise know you were resigning, correct?

6 A. Yeah, we contacted John Frezzo and let him
7 know.

8 Q. Okay. And at the time you resigned was there
9 any counter offer made by Enterprise?

10 A. No.

11 Q. Did Enterprise offer any kind of financial
12 kick to try to keep you?

13 A. Not at that time, no.

14 Q. Did you have to fill out any application to
15 get your job back at Enterprise?

16 A. No.

17 Q. Did you sign anything with respect to your --
18 your resignation at Enterprise in 2011?

19 A. No.

20 Q. You just verbally told your boss, John Frezzo,
21 what was happening?

22 A. Yeah.

23 Q. Okay. Is there any communication between you

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1 and John Frezzo through e-mail about what was
2 happening?

3 A. No.

4 Q. Did you and anybody else at Enterprise e-mail
5 each other about the resignation?

6 A. No.

7 Q. Was the resignation put in for Cindy, as well?

8 A. Yes.

9 Q. Besides the -- the half a day that you worked
10 for Struble, did you apply at any point in
11 time during 2011 to any other trucking
12 companies?

13 A. No.

14 Q. And did Cindy put an application into any
15 trucking companies in 2011 besides Struble?

16 A. No. You asked if they sweetened the pot,
17 actually when we got back that's when we got
18 into crude oil with Enterprise, that's when
19 we --

20 Q. Let me ask you the questions and then you can
21 provide the answers.

22 A. Okay. All right.

23 Q. We're going to need to take a break because I

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1 need to get a couple copies made.

2 **MR. HOUSH:** Do you want to break for
3 lunch?

4 **MR. BORON:** What time is it?

5 **MR. HOUSH:** It's 10 after 12.

6 **MR. BORON:** Well, it's up to everybody.
7 We're certainly going to have to take a lunch
8 break, that's for sure.

9 **MR. HOUSH:** I put the question to the
10 floor.

11 **MR. BORON:** What do you guys think?

12 **MS. LINDSTROM:** It's totally up to you.

13 **THE WITNESS:** Doesn't matter to me
14 either way.

15 **MR. BORON:** I mean, my preference would
16 be to go on and try to get to 1 o'clock or so.

17 **THE WITNESS:** Yeah.

18 **MR. BORON:** All right. While we're
19 still fresh.

20 **MR. HOUSH:** Okay.

21

22 (Recess taken)

23

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1 **BY MR. BORON:**

2 Q. Okay. Mr. Horn -- there came a point in time
3 in February of 2012 where you were driving for
4 Enterprise and had an accident?

5 A. Yes.

6 Q. Okay. And that was a one-vehicle accident?

7 A. Initially, yes.

8 Q. Okay. Tell me what you mean by "initially."

9 A. Well, after we had fell over another truck had
10 hit us, a pickup truck went over the
11 embankment and did the same thing I did.

12 Q. You were already off the road at that point?

13 A. Yes.

14 Q. On the side?

15 A. I was down in the ditch.

16 Q. Down in the ditch. Your car was already on
17 its side?

18 A. Correct.

19 Q. Okay. Where were you coming from and going to
20 on that trip?

21 A. I was going to Liberty, Montana, that was
22 about four miles up the road and I was coming
23 from Lake Charles, Louisiana.

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1 Q. Okay. Cindy was with you in the truck at the
2 time of the incident?

3 A. Yes.

4 Q. Okay. Was the accident an accident that had
5 to be reported to the DOT by Enterprise?

6 A. Yes.

7 Q. Yes. Are there certain kinds of accidents
8 that occur with trucks that don't have to be
9 reported to the DOT?

10 A. Yes.

11 Q. What's the difference?

12 A. I think if it has to be towed, if there's an
13 injury, those all have to be DOT reported,
14 fatality definitely.

15 Q. All right.

16

17 The following was marked for identification:

18 Exhibit 13 Enterprise DOT Reportable
dated March 22, 2012

19

20 **BY MR. BORON:**

21 Q. Mr. Horn, I'm showing you what's marked as
22 Exhibit 13 for today's deposition. Exhibit
23 13, I got an extra copy if somebody wants to

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1 see an extra copy of Exhibit 13.

2 For the record, Exhibit 13 consists of
3 five pages stapled together. First page is
4 a -- starts at ENT 109 and then the pages are
5 consecutively numbered through --

6 **MR. MAZZOLA:** They're not.

7 Q. Well, first four pages, ENT 112 and then the
8 last page is ENT 124. Do you see that,
9 Mr. Horn?

10 A. Yes, I do.

11 Q. First page is signed by somebody named Nolan
12 Everett with the label of director of safety.
13 Is he somebody who worked at Enterprise?

14 A. Yes.

15 Q. Okay. Did you talk to Nolan Everett about the
16 accident?

17 A. No, I talked to John McConiville. He was our
18 regional manager.

19 Q. Okay. Was Nolan Everett higher in the
20 organization than John?

21 A. Yes.

22 Q. Right. Okay. Was there an investigation done
23 by Enterprise into the accident?

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1 A. Yes.

2 Q. Was there a committee that examined what had
3 happened during the accident?

4 A. So I was told, yes.

5 Q. Okay. And the committee made a decision about
6 whether the accident was preventible or not
7 preventible?

8 A. Correct.

9 Q. And were you told by the committee that they
10 were preventible?

11 A. Well, they both -- I heard two different
12 things on that.

13 Q. Had you ever seen the copy of the report that
14 went to the DOT about the accident?

15 A. No, I haven't.

16 Q. Have you seen your own records, like your CSA
17 records regarding the accident?

18 A. No.

19 Q. Do you have any reason to doubt that
20 Enterprise reported to the DOT that the
21 accident was preventible?

22 A. My argument with them that if it was
23 preventative you have to tell me how.

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1 Q. But here's the question: Do you have any
2 reason to doubt that Enterprise reported to
3 the DOT after investigating the accident that
4 it was preventable?

5 A. No.

6 Q. You have no reason to doubt that?

7 A. Yeah.

8 Q. We try to get the record as clear as possible.

9 A. Right.

10 Q. That's why I'm following up with these kinds
11 of questions. You provided on the second page
12 some information about your recollection of
13 what happened at the accident, correct?

14 A. Correct.

15 Q. Okay. Do you know whether that -- what you
16 wrote, your explanation of the accident, was
17 considered by the committee at Enterprise?

18 A. I'm sure it was.

19 Q. And then there was the supervisor report, the
20 third page of this exhibit. Have you ever
21 seen a copy of this supervisor's report?

22 A. No.

23 Q. Did you talk with John Frezzo about the

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1 accident after it had occurred?

2 A. Yes, I did.

3 Q. Did you tell him what had happened?

4 A. Yes.

5 Q. Do you see where there's a reference on the
6 third page of the exhibit where it says James
7 has a million mile award in safety?

8 A. Yes.

9 Q. What is that?

10 A. That's you've done a million miles with no
11 incident.

12 Q. A million miles in your career or a million
13 miles for Enterprise?

14 A. A million miles for Enterprise.

15 Q. Do you have some document or record, plaque,
16 something like that?

17 A. Yes.

18 Q. You do?

19 A. Yes.

20 Q. All right. Is it at home?

21 A. Yes.

22 Q. Okay. Does Cindy also have a million mile
23 award in safety?

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1 A. She does.

2 Q. Were there any equipment defects that caused
3 the accident?

4 A. No.

5 Q. Was your truck run off the road?

6 A. It was not run off the road, no.

7 Q. Okay. It slid off the road?

8 A. Yeah, it was uncontrollable.

9 Q. Okay. Did you have to go through periodic
10 training through Enterprise for driving?

11 A. No.

12 Q. No. Did you ever receive training under the
13 Smith System?

14 A. Yeah.

15 Q. With Enterprise?

16 A. Yeah. That type, yes.

17 Q. Okay. And was that something that had to be
18 renewed from time to time?

19 A. They did the Smith System and I think they did
20 a goal system, so.

21 Q. And, again, you watch videos in a room?

22 A. Yeah, you watch videos, then there's some
23 questions.

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1 Q. Then there's some commentary, fill out a form,
2 answer some questions?

3 A. Correct.

4 Q. Have you had similar training at ICX?

5 A. No.

6 Q. You have not had Smith training at ICX?

7 A. No.

8 Q. Did you have to have hazardous material at
9 ICX?

10 A. You had to have recertification every two to
11 four years -- company recertification, yes.

12 Q. And who would do the recertification, the
13 person that ran the training program and
14 signed the certifications?

15 A. Usually the general manager.

16 Q. Okay. Is it always the same person that did
17 the hazardous material training?

18 A. Usually, yeah.

19 Q. Who was that?

20 A. John Frezzo.

21 Q. How many other people would get the training
22 the same time you were getting it?

23 A. We basically did it when we came in, so we

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1 pretty much did it, just me and Cindy.

2 Q. Just you and Cindy would watch the video?

3 A. Yeah, there wasn't a scheduled class or
4 anything, just when you came into the
5 terminal, take a half hour, hour, whatever it
6 took.

7 Q. And then John would sign a form saying you
8 were recertified?

9 A. Correct.

10 Q. The fact of your accident in North Dakota
11 makes you somewhat less interesting to a
12 perspective new employer as oppose to somebody
13 who has never had a wreck, correct?

14 A. Some.

15 Q. Okay. You got injured in that accident in
16 North Dakota, correct?

17 A. Yes.

18 Q. And Cindy got injured as well?

19 A. Yes.

20 Q. Okay. So what was injured, what part of your
21 body? Let's start with that.

22 A. My lower back and my shoulder.

23 Q. Okay. Had you had problems with your lower

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1 back before this accident occurred?

2 A. Yes.

3 Q. And by "this accident" I'm talking about the
4 North Dakota, February 24, 2012.

5 A. Correct.

6 Q. You had some problems with your back before?

7 A. Yes.

8 Q. You were diagnosed with degenerative disc
9 disease?

10 A. I don't know if that's what it was. I had
11 some problems, issues going on there. I had
12 several issues.

13 Q. Had you been treated for back pain before the
14 accident?

15 A. Yes.

16 Q. Did you have a -- like a special back doctor
17 or was your primary care doctor the person
18 that treated you for your back pain?

19 A. I had a special back doctor.

20 Q. Who was that?

21 A. I had actually two that would have been --
22 Jeez, I can't remember his name. I don't
23 remember his name at the moment.

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1 Q. Was it a doctor in New York State or in
2 Pennsylvania?

3 A. New York.

4 Q. New York. Somewhere in the Tri-Cities area?

5 A. Yeah, in Binghamton, New York.

6 Q. It was a male doctor?

7 A. Yes.

8 Q. When's the last time you saw this doctor for
9 your back?

10 A. Right before we went back to work after the
11 accident.

12 Q. Okay. Well, let's take it from the time of
13 the accident. Who's -- who's -- who treated
14 your back first? Was there an emergency
15 department that treated your back somewhere?

16 A. Correct.

17 Q. At a hospital?

18 A. Well, they did an MRI.

19 Q. Okay. So you went to an emergency department
20 first?

21 A. Yes.

22 Q. That's in North Dakota, correct?

23 A. I'm not sure if it was North Dakota or Montana

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1 because we were right there by the line.

2 Q. Okay. Were you admitted to a hospital?

3 A. No.

4 Q. Did you get a shot of anything while you were
5 in the --

6 A. Yep.

7 Q. -- ER? Demerol?

8 A. I believe so.

9 Q. And then you had the first visit with your
10 back doctor, would that be the next time your
11 back was treated?

12 A. We went to the Workman's Comp doctor.

13 Q. That's down in Sayre, Pennsylvania?

14 A. Pennsylvania, yes.

15 Q. What's that doctor's name?

16 A. Dr. Smith.

17 Q. Female?

18 A. Yes.

19 Q. How many times did you see Dr. Smith, the
20 Workers' Comp doctor?

21 A. I'm not sure. At least four times.

22 Q. Was Dr. Smith prescribing you any pain
23 medication?

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1 A. No.

2 Q. Dr. Smith just evaluated you each time you
3 went, was that the purpose of seeing
4 Dr. Smith?

5 A. Yeah, she recommended us for physical therapy.

6 Q. Did you go to physical therapy?

7 A. Yes, I did.

8 Q. Was that also down in Sayre, Pennsylvania?

9 A. Yes.

10 Q. How long were you doing physical therapy?

11 A. A few weeks. I don't know exactly how long.

12 Q. Were you prescribed any pain medication by any
13 doctor?

14 A. Yes.

15 Q. After the accident?

16 A. Yes.

17 Q. Yes. Who was prescribing pain medication for
18 you?

19 A. Dr. Choi.

20 Q. Is that the back doctor from Binghamton?

21 A. No.

22 Q. No, okay. Dr. Choi is your --

23 A. Primary.

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1 Q. -- primary care physician? How soon after
2 your accident did you see Dr. Choi?

3 A. As soon as we got home after the -- after I
4 saw the Workman's Comp doctor.

5 Q. Do you recall the pain medication you were
6 prescribed initially by Dr. Choi?

7 A. Yes.

8 Q. What was that?

9 A. Hydrocodone.

10 Q. Hydrocodone?

11 A. Mm-hmm.

12 Q. Anything else?

13 A. He gave me prednisone.

14 Q. Was Dr. Choi aware that you were a trucker?

15 A. Yes.

16 Q. Had you had any conversations with Dr. Choi in
17 the past about the drug test that you had to
18 take periodically, random testing that was
19 done?

20 A. Yep.

21 Q. Was there ever any discussion about
22 hydrocodone and whether that could be a
23 problem for you with drug testing?

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1 A. No.

2 Q. No. Did you ever ask Dr. Choi about any
3 particular either prescription or
4 nonprescription drugs that you took that you
5 were concerned about for drug test results?

6 A. Yeah, I asked him as far as taking it at work
7 and with the company and all that, the work I
8 do.

9 Q. When did you have that kind of a conversation
10 with him?

11 A. When he first prescribed it for me and I don't
12 know when that was. It's been a while.

13 Q. Before the accident you're talking about?

14 A. Before the accident, yes.

15 Q. Okay. After the accident did you have a
16 further conversation with Dr. Choi about drug
17 testing you would have to take eventually?

18 A. Yeah, he said it would be fine.

19 Q. He said what you prescribed him -- what he
20 prescribed for you wouldn't be a problem for
21 your drug testing going forward?

22 A. Right.

23 Q. By the time you had the positive test in

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1 October 2012, were you off the hydrocodone or
2 were you still taking it?

3 A. I was taking it off and on at night.

4 Q. Were you having trouble sleeping without
5 taking it?

6 A. I was having shoulder pain so that's why I
7 bought the product and that's why I went to
8 the product because the hydrocodone wasn't
9 allowing me to sleep with the pain.

10 Q. Were you still taking prednisone at the time
11 you tested positive in October 2012?

12 A. I don't think at that time, no. I was taking
13 it off and on.

14 Q. Was Dr. Choi just prescribing pain medication
15 for you without seeing you or did you have to
16 go into his office to see him to get the
17 prescriptions?

18 A. I usually went in and saw him.

19 Q. In other words, he wouldn't write you a
20 prescription just by talking to you on the
21 phone or if you were requesting it in some way
22 that wasn't face-to-face?

23 A. No, I had to go in to talk to him.

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1 Q. Okay. Was his office allowed to prescribe
2 medication for you without him being there?
3 In other words, just a nurse sees you and
4 gives you the prescription?

5 A. Not that I know of.

6 Q. Okay. How many times did you see Dr. Choi
7 after the accident before the positive drug
8 test?

9 A. At least two to three times.

10 Q. And when you saw Dr. Choi in those two or
11 three visits after the accident, but before
12 the positive drug test you were telling him
13 what parts of your body were in pain?

14 A. My shoulder.

15 Q. Right or left shoulder?

16 A. Right shoulder.

17 Q. Were you affording any other pain in your body
18 to Dr. Choi?

19 A. Just my low back.

20 Q. Low back, lumbar region?

21 A. Low back, yeah.

22 Q. And would Dr. Choi or a nurse ask you to rate
23 your pain on a 0 to 10 scale when you would go

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1 visit?

2 A. Yes.

3 Q. And so you would say my pain's at a 7 today or
4 a 9?

5 A. Correct.

6 Q. Okay. And did Dr. Choi tell you that if you
7 had a further problem, new problem that you
8 should get in touch with him and let you
9 know -- let him know?

10 A. Yeah.

11 Q. Yes, he did. Did you consult with Dr. Choi
12 about the product that you bought from Dixie?

13 A. No.

14

15 The following was marked for identification:

16 Exhibit 14 Worker's Comp Doctor Form

17

18 **BY MR. BORON:**

19 Q. Mr. Horn, showing you what's marked as
20 Exhibit 14 for today's deposition. For the
21 record, it's a two page exhibit, correct?

22 A. Correct.

23 Q. The pages are numbered in the bottom

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1 right-hand corner, ENT 551 and ENT 552,
2 correct?

3 A. Correct.

4 Q. Okay. In this two-page document on the first
5 page there's a heading that says History of
6 Present Illness; do you see that?

7 A. Where at?

8 Q. The heading right there that says -- sorry
9 about the small print -- History of Present
10 Illness.

11 A. Yep.

12 Q. Okay. So there's a description of the
13 accident at first -- the first part of the
14 History of Present Illness describes the
15 accident, correct?

16 A. Yes.

17 Q. Okay. Do you see farther down about five
18 lines from the bottom of that history of
19 present illness?

20 A. Yes.

21 Q. It says, he states he has degenerative disc
22 disease, two herniated discs and spinal
23 stenosis. Were you aware that you had two

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1 herniated discs --

2 A. Yes.

3 Q. -- at the time you were reporting this to a
4 doctor?

5 A. Yes.

6 Q. How long had you had herniated discs?

7 A. Since 2007 I think.

8 Q. Did they ever resolve or do you still have
9 them today?

10 A. I've been through decompression, that's
11 usually how I spend my vacations at
12 Christmastime, this five-week decompression
13 program, and then that would alleviate a lot.

14 Q. Okay. Is it -- do you have any reason to
15 deny --

16 A. No.

17 Q. -- that you have degenerative disc disease and
18 you've been dealing with two herniated discs?

19 A. No.

20 Q. No, okay. You see the next heading labelled,
21 it says Past Medical History?

22 A. Correct.

23 Q. Okay. And then it says -- there's one, two,

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1 three, four different types of things
2 described there?

3 A. Correct.

4 Q. Number one says Hepatitis C, correct?

5 A. Correct.

6 Q. Number two says degenerative disc disease,
7 number three says disc herniation in the
8 lumbar spine and four says spinal stenosis?

9 A. Correct.

10 Q. So how long have you had Hepatitis C?

11 A. I don't have it anymore. I've been treated
12 for it.

13 Q. When did you get treated for Hepatitis C?

14 A. The end of last year.

15 Q. That would be the end of 2016?

16 A. Correct.

17 Q. Okay. How long did you have Hepatitis C
18 before it was treated?

19 A. Not sure, just a couple years I would imagine.
20 About five, six years.

21 Q. In the report here we do have a date, okay,
22 toward the top it says date 3/7/2012, in other
23 words, March 7, 2012; do you see that up here

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1 where I'm pointing with my pen?

2 A. Correct.

3 Q. It's up near where your name is?

4 A. Yeah.

5 Q. Would that be the date that you had been
6 reporting this past medical history?

7 A. I would imagine, yes.

8 Q. Okay. So you had Hepatitis C as of that date?

9 A. As of that date, yeah.

10 Q. Okay. Was it untreated at that point?

11 A. They had treatments, I wasn't willing to go
12 with them.

13 Q. Okay. How long before March 7, 2012 did you
14 have Hepatitis C? Or another way to ask it:
15 When were you first diagnosed?

16 A. You know, I'm not sure when I first tested.
17 I'm really not sure.

18 Q. How did you find out you had Hepatitis C?

19 A. The doctor tested for it. I had been
20 previously tested two years before that and I
21 didn't have it, so how I got it I'm still
22 unclear.

23 Q. Okay. Was that first test -- first positive

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1 test for Hepatitis C before the year 2000?

2 A. No.

3 Q. Was it before the year 2005?

4 A. No.

5 Q. Was it before the year 2010?

6 A. Yeah.

7 Q. Sometime between 2005 and 2010?

8 A. Yeah.

9 Q. Who was it that diagnosed you with
10 Hepatitis C?

11 A. I don't remember the doctor's name. It was
12 with Guthrie and it was down in Ithaca.

13 Q. Did Dr. Choi refer you to Guthrie for this
14 test?

15 A. No.

16 Q. Was Dr. Choi your primary care physician at
17 the time that you were diagnosed with
18 Hepatitis C?

19 A. Yes.

20 Q. Did you report the symptoms to Dr. Choi before
21 you got tested by Guthrie?

22 A. I didn't have any symptoms.

23 Q. You didn't have any symptoms?

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1 A. No.

2 Q. How did it show up? How did you find out?

3 A. They did a blood test and tested for that.

4 Q. Was it a blood test that was part of just a
5 yearly physical or something like that?

6 A. Correct.

7 Q. And was the physical being done by Dr. Choi?

8 A. No, it was a different doctor. I don't
9 remember his name. I only saw him that one
10 time.

11 Q. Was it a physical you had to take for work as
12 part of your certification to work as a
13 trucker?

14 A. No.

15 Q. Was it a DOT physical?

16 A. No, it was for my back. I was looking for a
17 back doctor.

18 Q. Did any doctor ever tell you how you
19 contracted Hep C?

20 A. They say how you can, I don't know how I did.

21 Q. Does your wife Cindy also have Hepatitis C?

22 A. Yes.

23 Q. When was she diagnosed as having Hepatitis C?

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1 A. I don't know.

2 Q. Has she been treated for it?

3 A. No.

4 Q. Did any doctor -- any doctor ever tell you
5 that it affected your liver functions?

6 A. Yes.

7 Q. In what way?

8 A. Just that it gives you a fatty liver and can
9 cause cirrhosis and --

10 Q. Okay.

11 A. Basically it can kill you.

12 Q. You see in the lowest part of the first page
13 where the heading says Family History?

14 A. Yeah.

15 Q. It says pertinent for father having Hepatitis
16 C?

17 A. Correct.

18 Q. How were you aware that your father had
19 Hepatitis C?

20 A. He called me, that's why I was tested before
21 because we had tattoos done from the same
22 person and he found out that he had Hepatitis
23 C, so he told me I should probably go get

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1 tested as well and when I did it was negative.

2 Q. What year was that?

3 A. I'm not sure. 2006, around that area. I'm
4 not sure of the date and time.

5 Q. And was the -- did you get the tattoos at the
6 same year, 2006?

7 A. No, we got them 20 years prior, 30 years
8 prior.

9 Q. Okay. So at the time you got the tattoo from
10 20 years, 30 years earlier you had no reason
11 to think you had Hepatitis C, correct?

12 A. Correct.

13 Q. You had no blood tests done in those 20 to 30
14 years?

15 A. I didn't really need to have blood tests done
16 in those 20, 30 years.

17 Q. Well, did you have blood tests done over those
18 20, 30 years?

19 A. Not that I know of.

20 Q. No blood tests in 20 to 30 years?

21 A. Not that I know of.

22 Q. Did you have any surgeries in those years?

23 A. No.

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1 Q. Did you have any physicals?

2 A. Just regular physicals, no blood work.

3 Q. No blood work for physicals?

4 A. No.

5 Q. At the time of the accident in North Dakota
6 February 24th, 2012 were you suffering from
7 heart burn?

8 A. I might have been. I don't know.

9 Q. I mean, were you taking a medication for --

10 A. Yeah, actually I was.

11 Q. -- a problem with your esophagus?

12 A. Yeah, I forgot about that.

13 Q. Is that Protonix?

14 A. Yes.

15 Q. Are you still taking that today?

16 A. No.

17 Q. No. How long were you taking Protonix?

18 A. Several years.

19 Q. Okay. At the time of your positive drug test
20 in October 2012 were you taking Protonix?

21 A. I was probably taking it, but I only took it
22 once every two weeks, whenever I needed it.
23 Whenever I ate spicy foods.

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1 Q. Okay. Do you have a recollection of the last
2 time you took it before you provided the urine
3 sample that tested positive?

4 A. No.

5 Q. Do you have any awareness that Cindy has past
6 medical history of past kidney infection?

7 A. Yes.

8 Q. Yes, okay. Has that been treated?

9 A. Has it been treated?

10 Q. Right.

11 A. No, she just watches what she eats.

12 Q. Okay. When was she diagnosed as having
13 chronic kidney infection?

14 A. About 25 years ago.

15 Q. Before she met you or after you?

16 A. Right when we met.

17 Q. Okay.

18

19 The following was marked for identification:

20 Exhibit 15 Personnel Action Request
21 dated 10/17/12

22 **BY MR. BORON:**

23 Q. Mr. Horn, showing you what's marked for

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1 today's deposition as Exhibit 15. For the
2 record, it's a single page. In the bottom
3 right-hand corner it says ENT 2, the number 2,
4 do you see that?

5 A. Correct.

6 Q. Okay. This is a copy of a personnel action
7 request. In the upper right-hand corner
8 there's a box that's checked that says
9 termination; do you see that?

10 A. Yes.

11 Q. In the -- toward the bottom of the form
12 there's a section labelled comments regarding
13 any of the above actions and it says violation
14 of company policy and then it says Douglas
15 used 10 PTO days?

16 A. Yes.

17 Q. Do you see that?

18 A. Yes.

19 Q. Okay. You were terminated in October of 2012
20 from your employment at Enterprise, correct?

21 A. Correct.

22 Q. Did you receive a letter or any other written
23 document telling you that you were terminated?

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1 A. No, I had conversations with the head of
2 safety and John Frezzo as well and they told
3 me that Friday when I was notified of the
4 dirty random.

5 Q. Who is the head of safety?

6 A. That would have been Nolan Everett.

7 Q. Was it a face-to-face conversation you had had
8 with Nolan Everett?

9 A. No.

10 Q. And was it a face-to-face conversation you had
11 with John Frezzo about why you were being
12 terminated?

13 A. Not at that time, no. When I got back to the
14 terminal I had a face-to-face with John Frezzo
15 because we were in Texas when they told me I
16 was terminated.

17 Q. Okay. Did either of them bring up the issue
18 of the wreck in February of 2012?

19 A. No.

20 Q. Were you provided any specific reason why you
21 were being terminated when you talked to these
22 two gentlemen?

23 A. That I had a dirty random.

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1 Q. And who brought that issue up?

2 A. I actually called them up because I was
3 notified by the MRO on Friday -- on that
4 Friday and it was the weekend, so I called up
5 Nolan Everett and asked him -- told him what
6 had happened and he pretty much said that's
7 it.

8 Q. What do you mean pretty much that's it?

9 A. That's the end of the game here. You know, he
10 told me that they would get back to me and he
11 would go through the terminal manager and
12 that's when the terminal manager called me
13 back and said they wanted me out of the truck,
14 they wanted me to find my own way home, they
15 wanted Cindy to take the load on by herself up
16 to Oregon and that's when that conversation
17 started.

18 Q. Okay. Did Cindy take the load on to Oregon?

19 A. No. No.

20 Q. No. Did the two of you drive the truck back
21 to New Jersey?

22 A. She drove the truck back to New Jersey, I sat
23 as a passenger.

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1 Q. Okay. And that happened on Friday, which
2 would have been, what, October 11th of 2012 or
3 October 12th of 2012?

4 A. October 11th, something like that. I'm not
5 sure. I'd have to look at a calendar.

6 Q. Okay. How long was your phone conference with
7 the director of safety?

8 A. Just a few minutes.

9 Q. Less than five minutes?

10 A. About that.

11 Q. Okay. Did you record that phone conversation?

12 A. No.

13 Q. Did you ever speak to the director of safety
14 after that phone conversation?

15 A. Not that I remember, no.

16 Q. Let me ask some questions about the urine test
17 itself. Where were you and Cindy when you got
18 notified that you had to provide a urine test?

19 A. In Coraopolis, Pennsylvania.

20 Q. So that's near --

21 A. Pittsburgh.

22 Q. That's in the State of Pennsylvania, correct?

23 A. Yes.

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1 Q. And it's near -- or it is the place where
2 there is a terminal for Enterprise?

3 A. Yes.

4 Q. All right. And the notification came to you
5 through how? A text message on your phone?

6 A. No, they called and asked where we were and we
7 were like an hour out and they said we had to
8 go to our test, so not to leave the yard
9 because usually we drop and hook.

10 Q. So you're an hour away from the terminal at
11 that point?

12 A. Mm-hmm.

13 Q. And it's just the two of you in the truck?

14 A. Yep.

15 Q. And did you have anything with you that had to
16 be turned in to the terminal when you arrived?

17 A. No -- well, just paperwork.

18 Q. Log sheets?

19 A. We didn't turn them in there.

20 Q. No. Were you keeping written logs at that
21 point in time?

22 A. Yes.

23 Q. Yes, okay. Were you east, west, north, south

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1 of the terminal at the time you got the phone
2 call?

3 A. We were west of the terminal.

4 Q. West of the terminal. And after you got the
5 phone call what did you do?

6 A. We went in, dropped the trailer and went and
7 got drug tested.

8 Q. How long had it been since you had had a
9 random drug test at Enterprise before that?

10 A. I'm not sure.

11 Q. More than a year?

12 A. I'm not sure.

13 Q. Okay. What did you have in the truck with you
14 at the point in time you got that phone call
15 in terms of food or drink?

16 A. Didn't have any food in the truck.

17 Q. Okay.

18 A. Drinks, probably a water.

19 Q. Okay. Did you stop and get any food or drink
20 before you went to the drug test?

21 A. No.

22 Q. Did you drink any of the water that was in the
23 truck before you went to the drug test?

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1 A. Probably, yeah.

2 Q. Did you have a standard operating procedure
3 that you would follow when you would get
4 contacted and you were told to go somewhere
5 and get the test done in terms of getting
6 ready for it?

7 A. No.

8 Q. No. Would you try to do any exercising before
9 the urine sample was provided?

10 A. No.

11 Q. No. Try to flush anything out of your system
12 by drinking more fluid before the test was
13 administered?

14 A. No.

15 Q. No. Did you take any clean urine samples with
16 you to tests and turn in clean urine samples
17 in place of your own?

18 A. No.

19 Q. No. Did you ever hear of another trucker
20 doing that?

21 A. I've heard of people doing that.

22 Q. Okay. Do you know how they do it?

23 A. Nope.

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1 Q. Did anybody ever explain to you how to do it?

2 A. Nope.

3 Q. No. What was the name of the place you went
4 to to have the test done?

5 A. I don't recall.

6 Q. Okay. And when you arrived at that facility
7 was there a period of time you had to wait or
8 did they immediately take you to a place to
9 provide the urine specimen?

10 A. They usually take you in within the next 15
11 minutes usually.

12 Q. Okay. Does somebody observe you putting the
13 urine into a container?

14 A. No.

15 Q. Okay. You go into the room by yourself?

16 A. Correct.

17 Q. And do they give you specific instructions on
18 like how to do the process?

19 A. Just on how much to fill the cup up.

20 Q. Just to fill it up to a certain line?

21 A. Correct.

22 Q. Do they tell you they want you to have some
23 urine flow before you start filling the cup?

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1 A. No.

2 Q. Or you just start filling it right way?

3 A. They don't give you instructions. They just
4 say fill it that much and that's it.

5 Q. Okay. So you're alone, you provide the urine
6 into the cup and you hand it to somebody at
7 the facility?

8 A. Correct.

9 Q. Is there paperwork for you to sign at that
10 point?

11 A. Yes.

12 Q. Okay. Did you watch the person at the
13 facility handle your urine specimen at the
14 time you gave it to them?

15 A. Yes, I did.

16 Q. Until the time you left, correct?

17 A. Correct.

18 Q. After that you have no idea what happened to
19 your urine specimen from personal knowledge?

20 A. No.

21 Q. Was there ever a point in time where that
22 urine specimen went to a different room than
23 you were in as you were filling out the

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1 paperwork?

2 A. No.

3 Q. Was it always right there when you are filling
4 out the paperwork?

5 A. Yes.

6 Q. How does it work? Does the specimen container
7 get attached to a document and then you sign
8 the document?

9 A. I sign the document and then I sign the seal
10 on the specimen itself, I seal it, and then I
11 have to initial it.

12 Q. Are you the person that seals it or somebody
13 from the facility seals it?

14 A. They seal it.

15 Q. They seal it. And that's done in your
16 presence or outside of your presence?

17 A. That's done in my presence.

18 Q. Okay. And how large was this container?

19 A. Two containers about that tall, that big
20 around.

21 Q. And you filled two?

22 A. I filled one container, they filled the
23 separate containers. I fill up one cup, they

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1 take it over, they let me watch it, they do
2 it, they seal it, they say initial here, sign
3 the paperwork.

4 Q. For the record we'll have to describe your
5 hand motions and so forth.

6 A. Gotcha.

7 Q. So you fill up a container?

8 A. Yep.

9 Q. And then they get the -- they get two empty
10 containers?

11 A. Correct.

12 Q. All right. And then they are the ones
13 handling the container that has your urine and
14 pouring it into the two empty containers?

15 A. Correct.

16 Q. Okay. And what happens to the container that
17 you initially filled yourself?

18 A. That's empty then discarded.

19 Q. Okay. It's not given back to you?

20 A. No.

21 Q. Okay. And after you sign -- you sign two
22 different containers then?

23 A. I initial both containers that they seal.

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1 Q. You initial them?

2 A. Correct.

3 Q. Okay. Have you ever seen photocopies of your
4 initials on containers for that particular
5 specimen?

6 A. No.

7 Q. No. Did Cindy also go through testing at the
8 same facility at the same time?

9 A. No.

10 Q. No. Were you the only one that was required
11 to do a testing on that day?

12 A. That's what random usually is, yeah.

13 Q. Okay. Was Cindy there at the facility or did
14 you go by yourself?

15 A. She was with me.

16 Q. Okay. And when you provided the urine was she
17 in the same room as you or in a different room
18 when you're putting the urine in a specimen
19 cup?

20 A. She waited outside in the truck.

21 Q. She never came inside the building?

22 A. She never came inside the building.

23 Q. Okay. Do you remember the people's names that

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1 you interacted with at that testing facility?

2 A. No.

3 Q. Okay. So then in total how long were you
4 inside the facility building where you
5 provided the urine sample? Less than an hour?

6 A. Oh, yeah.

7 Q. Less than a half hour?

8 A. Right about that, a half hour.

9 Q. Okay. And after you left the facility the
10 next thing you heard about the urine test was
11 when you got contacted by somebody about the
12 result of it?

13 A. I got contacted by the MRO in Kansas or
14 Kentucky that said I did a dirty random.

15 Q. MRO stands for medical review officer?

16 A. Correct.

17 Q. Is that somebody that works for the DOT?

18 A. They were working for the lab.

19 Q. For the lab?

20 A. Right.

21 Q. Okay. Were the test results going to be
22 reported to the DOT?

23 A. I would imagine, yeah.

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1 Q. Okay. So this wasn't just an Enterprise test,
2 this was a DOT test as well?

3 A. Yes.

4 Q. Okay. And what were you told when you were
5 contacted about the urine test by the MRO?

6 A. That I did a dirty and that I was going to
7 basically not be able to drive unless I went
8 through a substance abuse program.

9 Q. When you say did a dirty?

10 A. Did a dirty --

11 Q. What does that mean?

12 A. A dirty random test.

13 Q. What does a dirty random test mean?

14 A. A dirty urine test sample.

15 Q. Okay. Did the MRO tell you that your urine
16 had tested positive for THC?

17 A. Correct.

18 Q. He did tell you that when the first contact
19 was made?

20 A. Yes.

21 Q. Okay. Were you sent anything by that MRO in
22 writing about your results of the test?

23 A. No.

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1 Q. You just got this information over the phone?

2 A. Correct. And I had the option since there's
3 two specimens, the second specimen is for
4 confirmation and if I wanted to pay for the
5 confirmation to have it retested that I could
6 do that, that I had that option so I went for
7 that option.

8 Q. Okay. And then you got contacted about that
9 second test?

10 A. Correct.

11 Q. By the same MRO?

12 A. No, a different facility all together in a
13 different state.

14 Q. Okay. So the MRO that had told you of the
15 dirty random test result didn't contact you
16 about the second test?

17 A. No, that was done with another lab.

18 Q. Okay. So somebody from that lab contacted you
19 to tell you the result of that?

20 A. Yeah, I believe.

21 Q. How long did it take you to find out the
22 result of the second test?

23 A. I think I found out that following Tuesday and

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1 I believe it was the MRO that I talked to that
2 told me I did the second dirty as well.

3 Q. Okay. Now while you were waiting for that
4 second set or the second sample container to
5 be tested, did you get your own test done that
6 you -- that you set up yourself?

7 A. Yes, I did.

8 Q. With MEDTOX?

9 A. Yes.

10 Q. Okay. So how did you know how to go about
11 doing that test? Did you call up MEDTOX on
12 the phone or follow some instructions online?

13 A. Yeah, I called them up and asked them if they
14 can do a test because, number one, I was in
15 disbelief that I tested positive for THC and I
16 told Cindy she should probably get tested as
17 well because if I had THC in my system then
18 there's a possibility that she might too
19 somehow and so I went and I did two drug tests
20 at, I guess it was MEDTOX is what you said it
21 was.

22 Q. MEDTOX is the name of the place.

23 A. Is that the name of the place? Yeah, I don't

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1 even know the name of the place. Yeah, I had
2 a 10 panel quick test done and then a five
3 panel DOT test done.

4 Q. Why were you concerned that Cindy might also
5 have an issue of possibly testing positive?

6 A. Because I had no idea that I had THC in my
7 system so I didn't know how I got it in there.

8 Q. This would be a great spot for a lunch break?

9 MR. MAZZOLA: Yep.

10

11 (Recess taken)

12

13 The following were marked for identification:

14 Exhibit 16 Form 8879 dated 2011

15 Exhibit 17 Form 8879 dated 2012

16 Exhibit 18 Form 1040 dated 2013

17 Exhibit 19 Form 1065 dated 2013

18 Exhibit 20 Form 1040 dated 2014

19 Exhibit 21 Form 1040 dated 2015

20 Exhibit 22 Form 1040 dated 2016

21

22 BY MR. BORON:

23 Q. Mr. Horn, we are back on the record after a

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1 lunch break. I remind you that you continue
2 to be under oath. Did you discuss your
3 answers of the morning with your attorney
4 while you went to lunch?

5 A. Not really.

6 Q. Did you get any direction from your attorney
7 with respect to how to testify going forward?

8 A. No.

9 Q. Okay. I'm going to be changing gears for a
10 bit of time here and go through some financial
11 information that's been provided to us, okay?

12 A. Okay.

13 Q. Mostly in the form of tax returns so I'm going
14 to show you Exhibit 16, all right, for
15 starters. Exhibit 16 for the record is a
16 photocopy of a number of pages, more than I am
17 able to count, I think it may be 20, but I
18 believe it reflects your 2011 tax return
19 information for both Federal and state.

20 In 2011 were you having CPAs called
21 Mondorf & Fenwick prepare your income tax
22 reports?

23 A. Yes.

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1 Q. Okay. A person named John Mondorf, did he
2 assist you with these 2011 tax returns?

3 A. I did not deal with him, I dealt with a lady
4 there.

5 Q. Okay. And just briefly can you tell us what
6 the process was to get your income tax returns
7 done by a CPA in 2011 or for the 2011 tax
8 returns?

9 A. Just things we thought were expenses and our
10 W-2 forms and --

11 Q. So you gave him all your W-2s for the year?

12 A. Yeah.

13 Q. Okay. Did you give him receipts as well?

14 A. On some things, yes.

15 Q. Did the CPA ask you to summarize travel
16 expenses in some way aside from receipts?

17 A. Right, yes.

18 Q. Okay. Did you, like, hand write out a list of
19 here's all the places we stayed, hotels we
20 paid?

21 A. That type of thing, yeah.

22 Q. Okay. All right. The second page of this
23 exhibit is the first page of your Form 1040

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1 for the tax year 2011; do you see that?

2 A. Okay. All right.

3 Q. You guys filed a joint tax return for 2011
4 with the U.S. Government?

5 A. Yes.

6 Q. Okay. And was that your -- your custom every
7 year, you filed joint tax returns?

8 A. Yes.

9 Q. All right. At the point in the time for the
10 2011 returns Elizabeth Horn, was she living
11 with you still?

12 A. Yes.

13 Q. Is that why you listed her as a dependant?

14 A. Yes.

15 Q. Okay. Did you have any other kids living with
16 you in 2011?

17 A. I don't think so.

18 Q. Were you renting space at your house to
19 anybody else to, you know, live in a bedroom
20 or anything like that?

21 A. No.

22 Q. Okay. And how about in 2012, same situation?

23 A. Yeah.

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1 Q. The three of you, was it you, Cindy and
2 Elizabeth living at the Parker Road house?

3 A. Yes.

4 Q. Was Elizabeth in college in 2011, 2012?

5 A. I'm not sure. I don't know.

6 Q. Did she graduate from a college?

7 A. She did.

8 Q. What college?

9 A. She did an online college with -- oh, God. I
10 can't remember the name. Ashworth.

11 Q. Ashworth?

12 A. Ashworth, yeah. The Ashworth College.

13 Q. Okay. Was she working at the time she was
14 living with you in 2011?

15 A. I believe so.

16 Q. Were you charging her room and board?

17 A. No.

18 Q. All right. If you flip to the third page of
19 Exhibit 16 -- is that what we're on,
20 Exhibit 16? That's the itemized deductions,
21 Schedule A, for the 2011 Federal tax return,
22 correct?

23 A. Okay.

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1 Q. I just want to make sure we're on the same
2 page, looking at the same page together.

3 A. Okay. I'm one off. Okay. There we go.

4 Q. All right. I want to direct your attention
5 down to the job expenses and certain
6 miscellaneous deductions section, starts at
7 line 21.

8 A. Yes.

9 Q. It says that there's unreimbursed employee
10 expenses at 32,324.

11 A. Okay.

12 Q. There's also a reference to see Statement 1.
13 I had some trouble finding Statement 1. Do
14 you have any -- the only information I see in
15 terms of Statement 1 is towards the back; do
16 you see that page right there?

17 A. Okay.

18 Q. It talks about state, local, and foreign
19 general sales taxes. Here's my question
20 anyways: Where is there a record, if there is
21 one, in the tax returns of your unreimbursed
22 employee expenses besides the number total?

23 A. Where is it?

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1 Q. Yeah.

2 A. I don't know. You'd have to talk to my CPA.

3 Q. Okay.

4 A. We are allowed to have \$59 a day in meals
5 reimbursement at the end of the year, so
6 depending on how many days I was out on the
7 road, each person deducts \$59 a day, so -- I
8 mean, if you're wondering why that number is
9 so high that's probably why.

10 Q. That's your understanding of how the tax code
11 works?

12 A. Yeah.

13 Q. Your CPA told you that or --

14 A. No, I've known that for some time.

15 Q. Okay. Why did you stop using Mondorf taxes
16 after 2012?

17 A. The tax lady was let go so I followed her.

18 Q. Okay. There's interest income listed on line
19 8 \$39. And if you go look at Schedule B of
20 this return it makes reference to Bank of
21 America. Is that where your mortgage is?

22 A. I believe so.

23 Q. This is in 2011 we're talking about.

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1 A. I believe so.

2 Q. Okay. You're not 100 percent sure?

3 A. No, I don't take care of that. Ask Cindy.

4 Q. Okay. Would it be accurate when it comes to
5 the income taxes Cindy might be a little more
6 knowledgeable about how the records were kept
7 and turned over to the CPA than you were?

8 A. Yep.

9 Q. Okay. Was part of the deduction that was
10 taken for your employee business expenses a
11 deduction for cell phone -- cell phone use?

12 A. Yes.

13 Q. Paying a monthly bill to have cell phone?

14 A. Right.

15 Q. Did you both have your own cell phone or just
16 one cell phone?

17 A. We both had our own phone.

18 Q. You both had your own. And did you both take
19 your cell phone in the truck with you when you
20 were out driving?

21 A. Yes.

22 Q. Okay. Back in 2011 were they smart phones at
23 that time?

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1 A. Pretty much.

2 Q. Like you could access the Internet?

3 A. Yeah.

4 Q. Okay. There is a component of your 2011
5 return says you're taking a deduction for
6 Internet fees as well?

7 A. Yes.

8 Q. Okay. Now in terms of coverage while you're
9 on the road in 2011 would you be able to
10 access the Internet anywhere and any time
11 because of the way the trucks were put
12 together?

13 A. Yes.

14 Q. Okay. So it didn't matter how far away you
15 were from a cell tower, for example?

16 A. No. There were spots where you didn't have
17 any service in any area, just very little.

18 Q. You had wifi in the trucks?

19 A. No, not wifi in the trucks, just the cell
20 phone service.

21 Q. Okay.

22 A. We had satellites in the truck where the
23 company could communicate with us and they

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1 tracked us.

2 Q. Would you look again at that second page of
3 the exhibit, which is again the first page of
4 the Form 1040 on line 7 for wages, salaries,
5 tips, etc. it says \$140,117, right?

6 A. Correct.

7 Q. So what does that number reflect, the joint
8 wages, salaries, and tips for both yourself
9 and Cindy?

10 A. Yes.

11 Q. Is that all income that you received from
12 Enterprise?

13 A. Correct.

14 Q. Did you have any other employer in 2011?

15 A. No.

16 Q. Had you started up the Horn's Transport LLC by
17 that point in time?

18 A. No.

19 Q. I'm going to show you what's been marked as
20 Exhibit 17, sir. Exhibit 17 for the record is
21 a copy of various income tax records related
22 to tax year 2012, so now we're one year later
23 in time in this exhibit. And 2012 also

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1 happened to be the year that you had the wreck
2 in February, correct?

3 A. Correct.

4 Q. And then you had the termination of your job
5 from Enterprise in October, correct?

6 A. Correct.

7 Q. All right. So my first question for 2012
8 income tax returns is there was a Louisiana
9 tax return filed. Why was there a Louisiana
10 tax return filed in 2012?

11 A. I'm not sure.

12 Q. Okay. It was a small amount of income listed
13 on there, \$20,360 Louisiana income; does that
14 ring a bell at all?

15 A. Uh-uh.

16 Q. Okay. When you suffered those injuries that
17 you described earlier in the wreck, that put
18 you out of work in 2012?

19 A. Yes.

20 Q. And did you receive Workers' Compensation?

21 A. Yes.

22 Q. While you were -- when you received or while
23 you received Workers' Compensation you were

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1 not working, correct?

2 A. Correct.

3 Q. Okay. So did Enterprise continue to pay you
4 something even though you weren't working
5 aside from the Workers' Compensation?

6 A. No.

7 Q. No. At what point did you start working in
8 2017 after -- I'm sorry, 2012 after the wreck?

9 A. I believe it was May 15th.

10 Q. So you were off a little shy of three months?

11 A. I think so, yes.

12 Q. When you went back to work in the middle of
13 May 2012 was that back to full-time driving
14 again?

15 A. Yes.

16 Q. Okay. Was Cindy off during the same time
17 period?

18 A. Yes.

19 Q. The two of you started working again together
20 as a team in mid-May of 2012?

21 A. Correct.

22 Q. Okay. And at that point in time were you on
23 any restrictions?

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1 A. No.

2 Q. You were completely cleared by doctors to go
3 ahead and start driving again like you had
4 been before the wreck?

5 A. Correct.

6 Q. Were you on any medication that was prescribed
7 by a doctor when you started working in May of
8 2012?

9 A. Hydrocodone.

10 Q. Is that the only prescription that you were
11 being given other than, let's forget about
12 like the heart burn medication, hydrocodone?

13 A. Yeah, I think that was it.

14 Q. You were off the prednisone already at that
15 point in time?

16 A. Yeah.

17 Q. Okay. Were you taking the hydrocodone
18 continuously then from the time you started
19 working in mid-May of 2012 right through the
20 time you got terminated by Enterprise?

21 A. No. No. Not regularly, no.

22 Q. Okay. When did you start -- when did the
23 process begin where you started to not take

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1 hydrocodone regularly?

2 A. How did it start, the process?

3 Q. Yeah. Was it in June? Was it in July?

4 August? September?

5 A. Actually it was in May. I went and had my
6 nerves burnt right before I went back to work
7 and that doctor's name was Dr. Seybold so --

8 Q. Okay. Where did that process take place? In
9 New York State?

10 A. Yeah, in Binghamton.

11 Q. Why was that procedure done? What was the
12 point of it?

13 A. To burn the nerves that were giving me pain in
14 my back.

15 Q. So it didn't have anything to do with your
16 shoulder?

17 A. Uh-uh.

18 Q. Is that the first time you ever had nerves
19 burnt?

20 A. No.

21 Q. Were there previous times you had nerves burnt
22 that didn't deal with your back problem?

23 A. No, they always dealt with my back.

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1 Q. Always dealt with the back, okay. What kind
2 of relief did you get from your back pain from
3 this getting done?

4 A. Sometimes I got relief, sometimes I didn't.
5 It depended on what nerves he hit.

6 Q. So that was done in May of 2012?

7 A. Yes.

8 Q. Did you have your nerves burnt any time
9 between that May instance and testing positive
10 in October?

11 A. No.

12 Q. So you and Cindy are back to work as a team,
13 it's May of 2012, you're driving all the same
14 routes you had been given in the past?

15 A. Yes.

16 Q. Okay. No change in your job duties at that
17 point in time?

18 A. No.

19 Q. Before you started driving in -- before you
20 began driving again in May 2012, did you have
21 to go through any drug testing at that point
22 in time?

23 A. I don't remember now.

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1 Q. Okay. Did you have to pass a road test to
2 start driving again?

3 A. No.

4 Q. No. Just had to get the okay from the doctor?

5 A. Yes.

6 Q. And was that from the Workers' Comp doctor
7 that you were getting the okay or?

8 A. Yes.

9 Q. Or primary care physician?

10 A. Workers' Comp.

11 Q. Workers' Comp doctor. Since you got that okay
12 from Workers' Comp doctor and went back to
13 work, did you then get examined again by the
14 Workers' Comp doctor at any point in time?

15 A. No.

16 Q. No. Did you have -- in 2012 once you started
17 working again did you have regular routes that
18 you drove, like you'd have the same assignment
19 over and over and over?

20 A. No.

21 Q. No. Did you have some assignments that would
22 be repeat assignments?

23 A. Sometimes, yes.

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1 Q. Sometimes, okay. Was the standard operating
2 procedure that you did most of the daytime
3 driving and Cindy did most of the nighttime
4 driving?

5 A. Correct.

6 Q. Did you ever have a device in the truck in
7 2012 that -- that was recording where you --
8 how far you had driven, each of you and how
9 much time you had had?

10 A. There was satellite tracking on the vehicle.
11 I don't know as far as the extent of
12 recording, it did not record who drove when,
13 no.

14 Q. Okay. Was there a record kept of who drove
15 when --

16 A. Logs, yes.

17 Q. -- in 2012? Handwritten logs?

18 A. Yep.

19 Q. Were they forms that you filled in the blanks
20 that Enterprise gave you?

21 A. Yes.

22 Q. Okay. And did you have to turn your log
23 sheets into the terminal when you would get

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1 back to the terminal?

2 A. Yes.

3 Q. All right. What did Enterprise do with your
4 log sheets after you got them turned into the
5 terminal?

6 A. They would go over them, make sure we weren't
7 in violation. If they were in violation we
8 would either have to sign off on them and then
9 they would store them.

10 Q. By violation you mean somebody drove too many
11 hours in a row without rest?

12 A. Correct.

13 Q. Something like that?

14 A. Yeah.

15 Q. Okay. Did they also -- those logs, were they
16 utilized by Enterprise to determine how much
17 to compensate you for the driving?

18 A. No.

19 Q. How did Enterprise know how far you had driven
20 or how to compensate you by mile?

21 A. By the dispatch that we did.

22 Q. Dispatch would just map out a route for you to
23 take?

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1 A. Dispatch would give us a pickup and delivery
2 and judge the mileage by that and we would
3 fill out the trip sheet of the trips that we
4 did and they would pay us according to that.

5 Q. If you had to deviate from their route, could
6 you get paid more money, like you had to take
7 a detour because of highway construction?

8 A. Only under, say, approval.

9 Q. Pre-approval?

10 A. Yeah, pre-approval.

11 Q. In the summer months of 2012, June, July and
12 August, let's focus on those three months,
13 were you still feeling pain from injuries that
14 you suffered in the accident in February?

15 A. I believe so. In my shoulder.

16 Q. What kind of pain were you experiencing in
17 your shoulder?

18 A. A sharp stabbing.

19 Q. Was there an injury that was diagnosed by a
20 doctor as a result of the February 2012 wreck
21 for your shoulder?

22 A. Not really, no. It was just pretty bruised
23 up.

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1 Q. Any bones broken in the shoulder area in that
2 accident?

3 A. No.

4 Q. Any ligaments torn or tenants torn?

5 A. Not that I'm aware of. Nobody did any X-rays
6 or anything like that. It was more focussed
7 on my back.

8 Q. Okay.

9 A. My shoulder didn't bother me too much then, it
10 bothered me when I went back to work.

11 Q. Okay. And in those three summer months, June,
12 July, and August of 2012, which -- which
13 injury was bothering you more, your right
14 shoulder or your lower back?

15 A. My shoulder.

16 Q. Did your primary care physician treat your
17 shoulder in 2012?

18 A. I went and saw him on it, yeah.

19 Q. What's his name again?

20 A. Dr. Choi.

21 MR. MAZZOLA: How do you spell that? Is
22 it C-H-O-I?

23 A. O-I, yeah.

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1 Q. So you saw Dr. Choi in the Summer of 2012
2 about your right shoulder?

3 A. Yes.

4 Q. Just one visit or more than one visit?

5 A. I believe I went and saw him twice.

6 Q. Did Dr. Choi prescribe any pain medication for
7 you on either of those visits?

8 A. Yeah, he did.

9 Q. What kind of medication?

10 A. Hydrocodone.

11 Q. Oh, hydrocodone. Where were you getting those
12 prescriptions filled?

13 A. There in Vestal.

14 Q. Do you remember which particular pharmacy?

15 A. I didn't really pick a particular one.

16 Whatever one I was going shopping at.

17 Sometimes at Costco or at Rite Aid.

18 Q. Mm-hmm. Was -- was -- were you filling
19 prescriptions in Vestal because that's where
20 Dr. Choi's office was?

21 A. Not particularly because of that, just
22 wherever I had to go shopping.

23 Q. Okay. Is that kind of your go-to place to go

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1 shopping from where you live?

2 A. No, not necessarily because I'm right in the
3 middle of three cities so I have three choices
4 to go to Ithaca, Elmira or Binghamton.
5 They're all about the same distance.

6 Q. How far is Dr. Choi's office from the SUNY
7 Binghamton's campus?

8 A. I don't think it's that far. About five
9 miles.

10 Q. Did Dr. Choi do any X-rays of your shoulder?

11 A. No.

12 Q. No. Did he prescribe any physical therapy for
13 your shoulder?

14 A. No.

15 Q. Did Dr. Choi give you any advice or
16 recommendations about how you could make your
17 shoulder pain go away or get better?

18 A. Yeah.

19 Q. Strength training?

20 A. With heat or cold compresses.

21 Q. Did you try heat or cold compresses on your
22 shoulder?

23 A. Yes, I did.

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1 Q. Is that something you were doing daily?

2 A. No, not daily, no.

3 Q. No. Did it work? Did it help?

4 A. Not really.

5 Q. Did you ever try acupuncture on your shoulder?

6 A. Not my shoulder, no.

7 Q. Did you ever try acupuncture on your back?

8 A. Yes, I did.

9 Q. When was the last time you had an acupuncture
10 treatment on your back?

11 A. It's been a long time. 2009, maybe. I don't
12 remember, it's been a while.

13 Q. Even though you don't remember the exact date,
14 would you be certain that the last time you
15 had acupuncture was before the wreck?

16 A. Oh, yeah.

17 Q. Okay. Besides heat or cold compresses and the
18 hydrocodone, did Dr. Choi give you any other
19 recommendations or suggestions about how to
20 deal with the pain in your right shoulder?

21 A. Not that I remember, no.

22 Q. Can we look again at that Exhibit 17? I want
23 to direct your attention to -- it's the 2012

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1 returns. On the second page of the exhibit,
2 which is the first page of your 10 -- Form
3 1040 line 17 -- no, is it 17? No, it's 16A.
4 Line 16A there's a reference to a rollover of
5 71,185?

6 **MR. MAZZOLA:** What page you on?

7 **MR. BORON:** The second page of the
8 exhibit, which is the first page of 1040.

9 **MR. MAZZOLA:** 16A.

10 **BY MR. BORON:**

11 Q. Yeah. Where it says rollover.

12 A. Second page.

13 Q. On the line that says pensions and annuities?

14 A. Yes, correct.

15 Q. And the word rollover is typed in there as
16 well?

17 A. Correct.

18 Q. So what does that reflect, the 74,185? Did
19 you do something with the money you had in
20 your retirement savings account?

21 A. I'm not sure if that was in 2012 or 2013, so
22 you would have to talk to Cindy on that, maybe
23 she might know. I have no idea.

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1 Q. Okay. We'll be able to ask you some
2 questions, Cindy, later.

3 I'm showing you what's marked as
4 Exhibit 18 for today's deposition, Mr. Horn.
5 This is a set of records that I understand
6 reflect income tax information for you and
7 your wife for the tax year 2013. It's a
8 little thicker than the previous two years'
9 packages, but that's because there's a return
10 in here for the Horn's Transport LLC. So I'm
11 going to start there.

12 2013 is the year after you were terminated
13 at Enterprise. Did you and your wife start a
14 business in 2013 called Horn's Transport LLC?

15 A. Yes.

16 Q. What kind of a business was Horn's Transport
17 LLC?

18 A. Transporting RVs.

19 Q. Were there any members of the LLC besides
20 yourself and Cindy?

21 A. No.

22 Q. And if we want to think of the Horn's
23 Transport LLC business in partnership terms,

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1 were you 50/50 owners?

2 A. Yes.

3 Q. You said that the nature of the business was
4 transporting RVs. From where to where?

5 A. Usually out of Indiana to all over the United
6 States.

7 Q. How did you transport the RVs?

8 A. With a pick-up.

9 Q. Did the business purchase a pick-up to do this
10 transporting?

11 A. Me and Cindy purchased it, yeah.

12 Q. Okay. This was a pick-up you did not own
13 before the business started?

14 A. Correct.

15 Q. All right. And what kind of a pick-up was it?

16 A. It was a 2012 Dodge Ram 3500 four-wheel drive.

17 Q. Was it new or used when you purchased it?

18 A. It was new.

19 Q. Did you have to have anything added to the
20 back of the pick-up to tow?

21 A. Yes.

22 Q. All right. Did the dealership that you bought
23 the pick-up at add that on for you before you

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1 took it away?

2 A. Yes, he did.

3 Q. Do you still own that 2002 Dodge Ram today?

4 A. No.

5 Q. Did you sell it?

6 A. Yes.

7 Q. When did you sell it?

8 A. Back in October.

9 Q. How much did you sell it for?

10 A. Like 35,000, around that.

11 Q. When you say "back in October," you mean 2016,
12 right?

13 A. Correct.

14 Q. You sold it for about 35,000?

15 A. Yep.

16 Q. Was it an arm's length transaction? In other
17 words, you didn't sell it to somebody in the
18 family or give somebody a deal on it?

19 A. No. I guess I sold it for 30.

20 Q. 30?

21 A. Yeah.

22 Q. How much did you buy it for in 2012?

23 A. It was almost 70.

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1 Q. How much?

2 A. Almost 70.

3 Q. Where did you purchase it?

4 A. Up in -- God, I can't remember the name --
5 Penn Yan.

6 Q. What was the name of the dealership?

7 A. I'm not sure. It was the Dodge dealer there
8 in Penn Yan. Friendly, I believe it was.

9 Q. Penn Yan up towards the Finger Lakes?

10 A. Yes.

11 Q. Okay. Franky was the name of the dealer?

12 A. Friendly, yes.

13 Q. Oh, Friendly.

14 A. Friendly.

15 Q. Do you still have the paperwork associated
16 with either the purchase or the sale?

17 A. I believe so.

18 Q. Both?

19 A. I believe so.

20 Q. In 2013 that exhibit shows that the state tax
21 returns are filed for Louisiana and North
22 Dakota, do you recall why?

23 A. We were briefly out of North Dakota.

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1 Louisiana I'm not sure on.

2 Q. When you say you worked briefly out of North
3 Dakota, what does that mean?

4 A. Well, we worked with a trucking company after
5 the RV. The RV only lasted a few months and
6 then we got back into a semi in August of
7 2013.

8 Q. When you say you got back into a semi, now
9 you're driving truck again as a team?

10 A. Correct.

11 Q. Like you had been for Enterprise?

12 A. Basically, yes.

13 Q. Okay. Was that for S&S Transport, KL Harring
14 Transportation or Kuhnle Brothers?

15 A. That was S&S.

16 Q. S&S.

17 MR. MAZZOLA: When was that? What
18 month?

19 Q. August of 2013. How did it come about that
20 you got a job with S&S Transport?

21 A. Through another driver that I had met on the
22 road.

23 Q. This other driver told you that S&S was

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1 looking for drivers?

2 A. They said they would probably hire me with my
3 circumstances, yeah.

4 Q. How long did you work for S&S Transport?

5 A. About three weeks.

6 Q. Why did you only work there three weeks?

7 A. Too low pay, not enough miles.

8 Q. Did you have another job you went to when you
9 left S&S Transport?

10 A. Correct.

11 Q. We'll go back to the transporting RVs first.
12 How long did that business last?

13 A. Just a few months up until like August. We
14 started in May -- May 1st.

15 Q. Did you transport any RVs in 2014, the next
16 tax year?

17 A. No.

18 Q. Okay. From S&S Transport you went to where?
19 Kuhnle?

20 A. Kuhnle.

21 Q. Kuhnle?

22 A. Kuhnle.

23 Q. K-U-H-N-L-E, Kuhnle Brothers.

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1 **MR. MAZZOLA:** K-U-H-N-L-E-E?

2 Q. No, there's only one E at the end. You worked
3 at Kuhnle for how long?

4 A. About a month.

5 Q. How did you find out about that job?

6 A. I called on it.

7 Q. Why did you only work there a month?

8 A. Pay wasn't like they said. We were paid on
9 percentage, so what we were being paid was
10 pretty low rate.

11 Q. When you say paid on percentage, you're
12 talking about per mile driven?

13 A. 22 percent of the load, what the load paid the
14 company, we got 22 percent.

15 Q. So that's a different pay formula than you had
16 at Enterprise?

17 A. Correct.

18 Q. Why did you stop working at Kuhnle?

19 A. I got another job.

20 Q. Were you working as a team with Cindy at
21 Kuhnle?

22 A. Yes.

23 Q. Is that when you started working for KL

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1 Harring?

2 A. After Kuhnle, yes.

3 Q. Harring is H-A-R-R-I-N-G?

4 A. Correct.

5 Q. This is all still in 2013?

6 A. Yes.

7 Q. How long did you work for KL Harring?

8 A. About six months.

9 Q. Same -- was it the same kind of work, you're
10 driving as a team the two of you?

11 A. KL Harring was a little different. They did
12 high security freight and you were required to
13 stop where they told you to stop.

14 Q. Okay. And is that something that you
15 preferred not to do?

16 A. Yeah, I don't like being told when I have to
17 go to the bathroom I can only go to that
18 certain spot which is six hours away and then
19 when it came for home time we had a
20 disagreement on home time, that's why I quit.

21 Q. You had to do what?

22 A. We had a disagreement on home time which is
23 why I quit.

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1 Q. Did the disagreement have to do with you
2 wanted to have a little more home time than
3 they were allowing?

4 A. No, I put in my home time six weeks before and
5 five days before it was time to go home --
6 actually four days before it was time to go
7 home they told me I couldn't go home for
8 another two weeks.

9 Q. Okay. So did you end up resigning from KL
10 Harring?

11 A. Yes.

12 Q. Because of those issues?

13 A. Yes.

14 Q. Did you have another job lined up at the time
15 you resigned from KL Harring?

16 A. No, I didn't.

17 Q. After KL Harring Transportation what was your
18 next job? Grandview?

19 A. Green Valley.

20 Q. Green Valley, okay. How long were you out of
21 work between KL Harring and Green Valley?

22 A. I think about three months.

23 Q. At the time you resigned from KL Harring had

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1 you contacted Green Valley already and gotten
2 a job lined up?

3 A. No.

4 Q. Did you apply for unemployment when you were
5 off of work between KL Harring and Green
6 Valley?

7 A. No.

8 Q. Why not?

9 A. Didn't think I was eligible.

10 Q. Why didn't you think you were eligible?

11 A. Because I quit.

12 Q. Okay. So how long did you work at Green
13 Valley?

14 A. About three weeks there.

15 Q. Were you doing the same kind of work, you and
16 Cindy together driving as a team?

17 A. Correct.

18 Q. Yes, okay. And after three weeks did you quit
19 that job, too?

20 A. Yes.

21 Q. Did you have another job lined up to go to at
22 that point in time?

23 A. No.

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1 Q. Is Green Valley also called Grandview
2 Incorporated?

3 A. No.

4 Q. That's a different trucking company?

5 A. Yes.

6 Q. Is that the next place you went to work?

7 A. Yes.

8 Q. How long were you off of work between Green
9 Valley and Grandview Enterprises?

10 A. I don't remember.

11 Q. More than three months?

12 A. No.

13 Q. More than a month?

14 A. Like maybe two months.

15 Q. Grandview Enterprises Incorporated, how long
16 did you work there?

17 A. Almost a year.

18 Q. Where was the terminal you were working out of
19 for Grandview?

20 A. Vancouver, Washington.

21 Q. Were you and Cindy driving as a team for
22 Grandview?

23 A. Yes.

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1 Q. You started with Grandview in 2014 and went
2 into 2015 with them?

3 A. Yes.

4 Q. Yes. Why did you leave Grandview Enterprises?

5 A. Better pay.

6 Q. This time you had a job lined up when you left
7 Grandview?

8 A. Yes.

9 Q. And that job was with Vensure?

10 A. With what?

11 Q. Vensure, V-E-N-S-U-R-E?

12 A. Never worked for Vensure.

13 Q. No. Did you ever hear of Vensure HR
14 Incorporated?

15 A. No.

16 Q. Well, maybe that's how you got paid for Green
17 Valley.

18 **MR. HOUSH:** Object to form.

19 A. We went to ICX after Grandview.

20 Q. Okay. You left Grandview and you went to ICX?

21 A. Correct.

22 Q. Any gap in employment between Grandview and
23 ICX?

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1 A. No.

2 Q. When did you start at ICX? November of 2015?

3 A. Correct.

4 Q. Did you start at Grandview in November 2015 --
5 I'm sorry, 2014?

6 A. Yes.

7 Q. Okay. When you -- to get the job at Grandview
8 did you have to fill out an application form?

9 A. Yes.

10 Q. Yes. Do you still have a copy of that
11 application form that you filled out for
12 Grandview?

13 A. No.

14 Q. No. Was it a paper form that you signed and
15 sent in?

16 A. More than likely, yeah.

17 Q. As oppose to an online fill in the blanks and
18 push a button and it goes to the company?

19 A. Usually on paper, we usually faxed it.

20 Q. Okay. While you were at Grandview did you
21 have a compensation package?

22 A. We had medical.

23 Q. Medical coverage?

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1 A. Yes.

2 Q. Was that provided entirely by the company or
3 did you have to pay some money out of your pay
4 to cover it?

5 A. That was provided by the company.

6 Q. Did you have life insurance when you were at
7 Grandview --

8 A. Nope.

9 Q. -- paid for by the company?

10 A. I don't believe so.

11 Q. Did you have paid vacation while you were at
12 Grandview?

13 A. No.

14 Q. What were you paid per mile when you drove?

15 A. 46 cents a mile.

16 Q. Between the time that you left Enterprise --
17 well, I should say between the time you were
18 terminated by Enterprise and today, have
19 you -- have you purchased new cell phone
20 equipment?

21 A. Yes, I have.

22 Q. Yes. More than one new cell phone in that
23 time period?

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1 A. Yeah.

2 Q. More than three new cell phones in that time
3 period?

4 A. No.

5 Q. Between one and three?

6 A. No.

7 Q. Do you know how many exactly?

8 A. Probably three.

9 Q. Okay. Do you have a smartphone today as you
10 sit here?

11 A. Yes.

12 Q. Okay. When did you get a smartphone?

13 A. When they first came out.

14 Q. Okay. That would be before you stopped
15 working at Enterprise?

16 A. Yes.

17 Q. All right. I'm showing you what's marked as
18 Exhibit 19 for today's deposition. Exhibit 19
19 is -- is also from tax year 2013, but it's
20 just the income tax returns for Horn's
21 Transport LLC. Do you see the -- the page
22 that's labelled Form 1065 in the upper
23 left-hand corner? It should be the first page

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1 of the exhibit. In the upper left-hand corner
2 it should say Form 1065.

3 A. Yep, gotcha.

4 Q. So on line 7 of that same page there's a
5 dollar amount in there, it's \$34,000 and
6 something.

7 A. Okay.

8 Q. What does that number reflect? The payments
9 that you were receiving for transporting the
10 RVs?

11 A. Yes.

12 Q. Was there any other income that -- that the
13 Horn's Transport LLC received besides
14 compensation for transporting RVs?

15 A. No.

16 Q. In order to purchase the Dodge Ram truck, did
17 you -- where did you take the money from? Did
18 you have it in savings?

19 A. I bought it on credit.

20 Q. You bought it on credit. Did you make any
21 down payment on that truck?

22 A. I did.

23 Q. How much?

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1 A. I'm not sure.

2 Q. Okay.

3 A. I know it's under five grand. About five
4 grand.

5 Q. Did you pay off the truck loan at this point?

6 A. Yes.

7 Q. Was it paid off before you sold the truck or
8 only after you sold the truck?

9 A. After we sold the truck.

10 Q. Okay. And to pay off the truck loan was the
11 sales price of the truck enough to pay off the
12 truck loan?

13 A. Yes.

14 Q. May I see that for a moment? There's a line
15 numbered 16 on the first page of Exhibit 19
16 that's labelled depreciation and it says
17 \$43,000 and change. Is that depreciation on
18 your truck that you bought for the business?

19 A. You'd have to talk to my tax lady. I don't
20 know.

21 Q. You don't know, okay. All right. I'm showing
22 you what's been marked for this deposition as
23 Exhibit 20. These are photocopies of pages

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1 from your 2014 income tax returns and at the
2 back of that exhibit, the third last page
3 is -- is a photocopy of some W-2s. The W-2s
4 are from an entity named Vensure I think is
5 the name of it. The name I was asking you
6 about earlier, but you didn't recognize. Do
7 you see where it says Vensure, V-E-N-S-U-R-E,
8 HR?

9 A. Yeah.

10 Q. Do you see the address of Mason, Arizona?
11 Does that ring a bell for you?

12 A. Not at all.

13 Q. No. What's the dollar amount that's shown on
14 the W-2 for Vensure for line 7 wages?

15 A. Line 7?

16 Q. No, on the W-2 there will be a box. I guess
17 it will be box 1.

18 A. Box 1 is 2300 -- 2337.92.

19 Q. Okay. As you sit here today you just don't
20 know what that refers to?

21 A. No.

22 Q. Okay. All right. I'm going to pass on to you
23 two exhibits here, 21 and 22. Just a couple

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1 quick questions about those.

2 For the record, Exhibit 21 is a photocopy
3 of income tax records related to tax year 2015
4 and then Exhibit 22 is some income tax records
5 from tax year 2016. In the line 7 wages for
6 the 2015 Form 1040 there's an amount of
7 129,254. Is that the sum total of the wages
8 that you and Cindy were paid by Grandview and
9 ICX in 2015?

10 A. Correct.

11 Q. Okay. In 2016 same question about line 7,
12 there's a number that's 156,196, right?

13 A. Correct.

14 Q. But that would reflect just your pay from ICX
15 for 2016, correct?

16 A. Correct.

17 Q. You didn't work for anyone else besides ICX in
18 2016?

19 A. Correct.

20 Q. Okay. Do you have any reason to believe that
21 there's any -- any mistakes that were made on
22 your tax returns for any of these years that
23 we've looked at, 2011, '12, '13, '14, '15, or

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1 '16?

2 A. No.

3 Q. Were you ever audited on any of those tax
4 returns by either the IRS or some other taxing
5 authority?

6 A. Not those years, no.

7 Q. Were you ever late making payments on taxes
8 that were owed for any of those years?

9 A. No.

10 Q. Did you ever ask for any extension of time to
11 file an income tax return in any of those
12 years?

13 A. No.

14 Q. Do you also pay property taxes -- real
15 property taxes in Lockwood, New York?

16 A. Yes.

17 Q. Okay. When -- when your retirement savings
18 was -- was taken out of Enterprise after you
19 were terminated, what did you do with the
20 money?

21 A. Put it in the bank.

22 Q. You had an account, I think it was with
23 Fidelity, right, when you were with

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1 Enterprise?

2 A. Correct.

3 Q. Okay. So you put it into a savings account?

4 A. Yeah, we did.

5 Q. Were there taxes paid on the money that was
6 taken out of the Fidelity account?

7 A. We paid the initial taxes, yes.

8 Q. Okay. And then you kept the money in a
9 savings account?

10 A. Yep.

11 Q. Do you still have it today in a savings
12 account?

13 A. No.

14 Q. Where -- what happened to that money?

15 A. Life went through it.

16 Q. Did you use some of it to buy the truck?

17 A. Yeah, that was part of the down payment.

18 Q. Okay. Before you said, I think, you couldn't
19 remember exactly how much down payment you put
20 down. Was it more than 10 percent?

21 A. No.

22 Q. Less than 10?

23 A. I believe it was less than 10. I'm not quite

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1 sure because there were so many numbers thrown
2 around.

3 Q. Right. Did you start the LLC -- the Horn's
4 Transport LLC by yourself or did you hire a
5 lawyer to do that for you?

6 A. No, we had a lawyer.

7 Q. How much did you pay the lawyer to start the
8 LLC?

9 A. I don't know.

10 Q. Less than \$5,000?

11 A. I would assume so.

12 Q. Well, I don't want you to assume. Do you know
13 if it was less than 5,000?

14 A. Well, yeah, I'm sure it was less than 5,000
15 because I wouldn't pay 5,000 for an LLC. It's
16 not a hard process.

17 Q. Okay. What's the name of that lawyer?

18 A. I don't know.

19 Q. Okay. On your 2016 tax return there's a W-2
20 from ICX. It should be at the back. This is
21 the second last page of Exhibit 22, for the
22 record, I'm showing you.

23 A. Okay.

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1 Q. A photocopy of a W-2 for yourself and for your
2 wife as well. I know the copy is real grainy.

3 A. Yeah.

4 Q. But there's a box called box 14. Do you see
5 box 14 on each of your respective W-2s from
6 ICX?

7 A. Yeah, I can't really make out -- yeah, I think
8 I see 14.

9 Q. It's the big one in the middle.

10 A. Correct, yep.

11 Q. And it says SEC 125 in that box?

12 A. Yep.

13 Q. And there's also a dollar amount, \$1,617.50?

14 A. Correct.

15 Q. Is that money that's being put into a
16 retirement savings account?

17 A. Not that I know of.

18 Q. Do you know what that reflects, Section 125?

19 A. I don't know what that is.

20 Q. Okay. Are you okay? Do you need a break?

21 A. No, I'm good.

22 MR. HOUSH: It's awfully hot. I don't
23 know if there's anything you can do about

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1 that.

2 **MR. BORON:** Off the record.

3

4 (Discussion held off the record)

5

6 **BY MR. BORON:**

7 Q. All right. Now I want to turn your attention
8 back if you would. We're going to go way back
9 to one of these first exhibits which is your
10 complaint in this action.

11 A. Okay.

12 Q. And I need you to go to page 3 of the
13 complaint.

14 **MS. LINDSTROM:** Maybe we should open the
15 door?

16 **MR. BORON:** Well --

17 **MR. HOUSH:** If it's not loud out there
18 that's fine with me.

19 **MR. BORON:** If it's all right with you
20 guys. Does it matter to you? There's people
21 that come by and some work for our firm and
22 some people don't work for our firm, but if
23 you don't mind other people possibly

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1 overhearing.

2 **MR. HOUSH:** No, this is all -- I don't
3 think there's anything that's going to --

4 **BY MR. BORON:**

5 Q. Okay. Did you find page 3 of the complaint
6 and then paragraph 12 on that page?

7 A. Okay.

8 Q. Okay. So your complaint alleges that after
9 your February 24, 2012 vehicle accident you
10 took anti-inflammatory and other medication.
11 Do you see that allegation?

12 A. Correct.

13 Q. Okay. So is the anti-inflammatory medication
14 that you took the hydrocodone?

15 A. Prednisone.

16 Q. Prednisone?

17 A. Yeah, that's basically a steroid and I'm not
18 sure if he had me on Relafen or not.

19 Q. Did you take Relafen after the accident?

20 A. I don't know if I took it after the accident.
21 I know I had it at one time, but I don't know
22 if I took it after.

23 Q. And when you say "he," you're talking about

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1 Dr. Choi?

2 A. Yeah.

3 Q. Do you know how to spell Relafen?

4 A. It was actually called something else, but
5 that was the actual name for it was Relafen.
6 He just gave me the generic so it was called
7 something else.

8 Q. Okay. In any event, that allegation that we
9 were just looking at together in your
10 complaint of paragraph 12 says that you not
11 only took anti-inflammatory medication, but
12 you took other medication?

13 A. Right.

14 Q. So what was the other medication you were
15 taking?

16 A. The hydrocodone.

17 Q. Okay. Is there any other medication besides
18 the prednisone or the hydrocodone that you
19 were taking?

20 A. No.

21 Q. At any point in time after the wreck right up
22 until the positive drug test?

23 A. Just Motrin.

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1 Q. You took Motrin as well?

2 A. Yeah, I took Motrin.

3 Q. Okay. What about Tylenol?

4 A. Not so much.

5 Q. Did you take some Tylenol after the wreck?

6 A. I did.

7 Q. You took some Motrin as well?

8 A. Yeah, because that's what the Workers' Comp
9 doctor told me to do was take Motrin.

10 Q. Okay. Did you take any other over-the-counter
11 pain relievers of that type?

12 A. No.

13 Q. Were you ever prescribed Percocet after the
14 wreck?

15 A. I don't believe so, no.

16 Q. You testified earlier that there came a point
17 in time when you stopped taking the
18 hydrocodone on a regular basis. You would
19 just take it as needed --

20 A. Correct.

21 Q. -- is that correct?

22 A. Correct.

23 Q. Okay. So did you check with Dr. Choi whether

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1 it was okay to just take it on an as-needed
2 basis going forward?

3 A. I did.

4 Q. All right. And what did he tell you?

5 A. He told me I should probably take it on a
6 regular basis.

7 Q. Did he forbid you from using it only on an
8 as-needed basis?

9 A. No.

10 Q. Okay. Did you talk with him about whether
11 there would be possible ramifications for
12 random drug testing if you started to take a
13 medication in intervals that he hadn't
14 prescribed?

15 A. We had discussed about taking the hydrocodone
16 at work, yeah, and he said that I would be
17 fine.

18 Q. Were you taking the hydrocodone and using the
19 hydrocodone while you were driving your truck?

20 A. No.

21 **MR. MAZZOLA:** Can you read back the last
22 question and answer?

23 **MR. BORON:** Last or two questions ago?

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1 **MR. MAZZOLA:** The one -- go back two.

2

3 (Record read back by reporter)

4

5 **MR. MAZZOLA:** Thank you.

6

BY MR. BORON:

7 Q. Did you make Dr. Choi aware that -- that you
8 were having continuing pain in your right
9 shoulder?

10 A. Yes, I did.

11 Q. Okay. Is that why you saw him more than once
12 that Summer of 2012?

13 A. Yeah.

14 Q. Did he tell you -- did he say to you let me
15 know if the pain gets worse?

16 A. I don't recall.

17 Q. Did he ever refer you to a surgeon?

18 A. No.

19 Q. Did he discuss with you what the next step in
20 treatment could be if -- if the pain pills
21 that he was prescribing for you weren't doing
22 the job?

23 A. My understanding is that it was basically

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1 inflammation that would go away eventually.

2 Q. Okay. Did he ever tell you to ice your
3 shoulder?

4 A. Yes.

5 Q. Did you ice your shoulder?

6 A. I did, but it didn't do any good so it wasn't
7 something I did regularly.

8 Q. Okay. When was the last time you saw Dr. Choi
9 before you tested positive?

10 A. I saw him last week.

11 Q. No, the last time before you tested positive?

12 A. Oh, the last time before I tested positive.
13 Oh, probably about a month, I believe.

14 Q. Did he ever -- did he ever refuse to prescribe
15 a medication that you were asking for?

16 A. I never asked him for any medication, that's
17 what he gave me.

18 Q. Okay. After you tested positive did you
19 contact Dr. Choi to let him know that that had
20 occurred?

21 A. Yes, I did. I went and saw him.

22 Q. How soon did you contact him and tell him you
23 tested positive?

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1 A. As soon as I got home. I actually had him do
2 another drug test.

3 Q. You had him do another drug test?

4 A. Yeah.

5 Q. In his office?

6 A. Yeah.

7 Q. Okay. Is that the urine sample that was sent
8 to MEDTOX?

9 A. I don't know.

10 Q. You don't know. What did Dr. Choi tell you
11 the result of the drug test that he did?

12 A. He told me it was unnecessary for me to do
13 that and my line of thinking was wrong, but he
14 did it anyway.

15 Q. Okay. Did he tell you what the result of that
16 test was?

17 A. No. I know it was negative.

18 Q. You said you know it was negative?

19 A. Well, if it was positive he would have told
20 me, I'm sure.

21 Q. Did he give you some written report about
22 the -- that drug test?

23 A. Just my normal, you know, exit papers.

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1 Q. And was it a urine test only?

2 A. Yeah.

3 Q. So because Dr. Choi never said to you that the
4 test he administered to you was positive you
5 just assumed it was negative?

6 A. I knew it was negative because I didn't
7 have --

8 Q. How did you know it was negative?

9 A. Because I just had a drug test four days
10 before that and I didn't have THC in my
11 system.

12 Q. Which drug test was that?

13 A. The one that -- in Texas.

14 Q. The one that you sent --

15 A. The one that I went down --

16 Q. Through the mail to MEDTOX?

17 A. No, the drug test that we did when we got
18 notified that we had a dirty random we went
19 down and drug tested at our own expense, me
20 and Cindy, and then we drove home.

21 Q. Okay. Let's start with -- let's start with
22 the dirty test that -- you provided urine in
23 Pennsylvania for that test, correct?

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1 A. Correct.

2 Q. And that is on October 9th, 2012?

3 A. I believe so, yes.

4 Q. And when you say you and Cindy drove down, did
5 you start driving on October 9th down to
6 Texas?

7 A. We did not get notified until, I think, two
8 days later that we did a dirty random and we
9 were in Texas at the time.

10 Q. Okay. So you supplied the urine for the test
11 in Pennsylvania?

12 A. Pennsylvania.

13 Q. On the 9th?

14 A. Correct.

15 Q. And then you -- were you given a new load --

16 A. We were given a new load and we were on our
17 way -- we actually went down -- I believe we
18 picked up a load from Pittsburgh to Texas and
19 then we were going from Lake Charles to
20 Portland, Oregon.

21 Q. On October 11th, two days after you had
22 supplied the urine for a drug test, you're
23 told through a phone call that it was a dirty

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1 sample?

2 A. Correct, that I had THC in my system. Unless
3 I was on Marinol and had a prescription for it
4 that basically I'd have to go do the SAT
5 program.

6 Q. What's Marinol?

7 A. I guess synthetic marijuana.

8 Q. Did you ever take Marinol in your life?

9 A. Never.

10 Q. Does Marinol go by other names too?

11 A. I wouldn't know.

12 Q. Okay. So on October 11th you get the phone
13 call and that same day did you supply another
14 urine sample?

15 A. When I got the call that we had done a dirty
16 random, talked to the company the very next
17 morning because it was 6 o'clock at night,
18 very next morning me and Cindy went down to
19 the nearest drug test facility and did drug
20 tests.

21 Q. How much did you pay to get those drug tests
22 done?

23 A. I don't remember.

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1 Q. Was it more than \$100 each?

2 A. Yeah, I believe so.

3 Q. Was it more than \$500 each?

4 A. No.

5 Q. How do you know that test came back negative?

6 A. Because I got the results.

7 Q. So that's why you say Dr. Choi's test was the
8 third one that you had endured in about a
9 week's time?

10 A. Yeah.

11 Q. Two of them came back negative, Dr. Choi's
12 test came back negative and the one where you
13 supplied the urine in Texas came back
14 negative?

15 A. Yeah, I did two tests there so it was actually
16 three.

17 Q. You did two tests in Texas?

18 A. I did an instant test and then I did a DOT
19 test.

20 Q. Okay. The instant test --

21 A. Yes.

22 Q. -- in Texas was just like going to the
23 drugstore and buying something and --

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1 A. I think it's a little more sophisticated than
2 that, but yeah, basically.

3 Q. You read your own test results?

4 A. No, they administered the test.

5 Q. Oh, okay. So two separate urine samples?

6 A. Correct.

7 Q. Did Cindy go through two sets of urine tests
8 in Texas?

9 A. No, she just did a DOT.

10 Q. She just did a DOT. What was the result of
11 Cindy's DOT test?

12 A. Negative.

13 Q. Were the results of your tests for urine you
14 supplied in Texas sent to Enterprise?

15 A. Yes, we did. I sent them.

16 Q. You sent them?

17 A. Yeah.

18 Q. Okay. As soon as you got them you passed them
19 on to Enterprise?

20 A. Yes.

21 Q. What was the reaction of Enterprise?

22 A. Well, my terminal manager, I faxed it to him
23 and he said he would pass it along to Nolan,

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1 but they basically said a dirty random is a
2 dirty random.

3 Q. Do you know if it got passed on to random --
4 to Nolan, your second test?

5 A. I was told.

6 Q. Okay. And John Frezzo's the one that told you
7 that?

8 A. Yeah.

9
10 The following was marked for identification:

11 Exhibit 23 Photocopy of High Times
12 Medical Marijuana Article

13 **BY MR. BORON:**

14 Q. I'm showing you, Mr. Horn, what's been marked
15 as Exhibit 23 for today's deposition. For the
16 record, it's two pages stapled together. The
17 front page is a photocopy of a cover to a
18 magazine, second page is an article from a
19 magazine. Would you agree with that?

20 A. Yes.

21 Q. And the magazine we're talking about is High
22 Times?

23 A. Yes.

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1 Q. Okay. Were you a subscriber at any point in
2 time to High Times magazine?

3 A. Nope.

4 Q. Did you ever have this particular issue, which
5 is the Fall 2012 issue of High Times?

6 A. I purchased that, yes.

7 Q. You purchased it?

8 A. Mm-hmm.

9 Q. Where did you purchase it?

10 A. At a bookstore, Barnes & Noble in Texas.

11 Q. In Texas. When did you purchase it?

12 A. I'm not sure.

13 Q. Purchased it before your dirty random?

14 A. No, before.

15 Q. Does a log test show that you were in Texas
16 before your dirty random?

17 A. Oh, I'm sure. I don't personally have one,
18 no.

19 Q. Where was the Barnes & Noble in Texas?

20 A. In Freeport, Texas there's a bookstore, it
21 might not have been Barnes & Noble.

22 Q. And it wasn't Cindy that bought it, it was you
23 that bought the magazine?

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1 A. Well, we were together, so.

2 Q. Oh, you were together, okay. So it was a
3 joint decision to purchase the magazine?

4 A. Yeah.

5 Q. Do you have a receipt for purchasing the
6 magazine?

7 A. Nope.

8 Q. Did you purchase it with cash or a credit
9 card?

10 A. I don't remember.

11 MR. BORON: Frank, they're going to
12 produce their credit card statements, right?
13 We asked for the credit card statements.

14 MR. HOUSH: I understand. Yeah, there's
15 no reason to believe that that's not going to
16 happen.

17 MR. BORON: Okay. I'm sorry to do this,
18 but I need to reserve the right to redepose
19 them on their credit card statements when I
20 get them.

21 MR. HOUSH: I understand.

22 BY MR. BORON:

23 Q. Yep. Okay. Was this the first time you had

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1 ever purchased a High Times magazine?

2 A. Yep.

3 Q. The very first time in your life?

4 A. Yep.

5 Q. Did you even know such a magazine existed
6 before you purchased it?

7 A. I heard about it.

8 Q. Heard about it by who?

9 A. Not any particular person, I just heard about
10 it.

11 Q. Somebody recommend that you buy this magazine?

12 A. No.

13 Q. What led you to buy it?

14 A. The ad inside there for Dixie X.

15 Q. You're referring to this ad that's on page 42?

16 A. Correct.

17 Q. That's what made you decide to buy the
18 magazine?

19 A. Yeah.

20 Q. Had you read through the first 41 pages and
21 then you got to page 42 and that made you buy
22 the magazine?

23 A. We flipped through it, yeah.

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—DOUGLAS J. HORN - BY MR. BORON - 05/08/17—

1 Q. Okay. Why is it that you were flipping
2 through the magazine?

3 A. It was on a table actually and Cindy's mom has
4 cancer so we thought that, you know, we'd see
5 if there was anything in there because of the
6 marijuana/cancer thing.

7 Q. Did this headline on the cover that says
8 Medical Marijuana, is that what caught your
9 attention?

10 A. Correct.

11 Q. In terms of wanting to look at what's in the
12 magazine?

13 A. Correct.

14 Q. Cindy's mom had had cancer for how long?

15 A. She had just been diagnosed.

16 Q. She had just been diagnosed?

17 A. Yep.

18 Q. What state was Cindy's mom living in at that
19 time?

20 A. California.

21 Q. Had Cindy's mom suggested that -- that maybe
22 medical marijuana might help her condition?

23 A. No.

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1 Q. At that point in time was Cindy's mom going
2 through treatment for her cancer?

3 A. Not at that particular time, no.

4 Q. No. And what kind of cancer was it?

5 A. Breast cancer.

6 Q. When did Cindy's mom get diagnosed with breast
7 cancer?

8 A. I don't remember.

9 Q. Was it in 2012?

10 A. Yes.

11 Q. When did Cindy's mom tell you that she had
12 been diagnosed with cancer?

13 A. It wasn't long before this, before we bought
14 that so I couldn't tell you a specific date.

15 Q. By "it wasn't long," do you mean less than a
16 month?

17 A. Yeah, about a month.

18 Q. And you bought this in October of 2012?

19 A. Bought this?

20 Q. Yeah.

21 A. I'm not sure when I bought it exactly.

22 Q. You have no record of when you bought it?

23 A. No.

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1 Q. And no memory of when you bought it?

2 A. Not really, no.

3 Q. So you could have bought it after the dirty
4 random?

5 A. No, because I wasn't in Texas after the dirty
6 random.

7 Q. I thought you were there giving urine?

8 A. Well, I gave urine and then went straight
9 home. That's a higher place in Texas. Texas
10 is a pretty big state.

11 Q. What city were you in when you gave the urine?

12 A. I can't remember the name of it. It's almost
13 like Dumont.

14 **MR. MAZZOLA:** Dumas, it's on the thing.

15 Q. How far is that from Freeport?

16 A. Quite a ways.

17 Q. Is it on the way back to New York State?

18 A. Nope.

19 Q. To Freeport?

20 A. No.

21 Q. Okay. So at the time that you purchased the
22 magazine your concern was to find out whether
23 the magazine had information about medical

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1 marijuana that might treat her -- Cindy's
2 mom's pain that she was dealing with for
3 cancer?

4 A. Correct.

5 Q. Did you take the magazine home with you or
6 leave it at the bookstore?

7 A. We purchased it.

8 Q. Did you retain the magazine?

9 A. That's -- yeah.

10 Q. Do you still have the magazine today?

11 A. Yeah.

12 Q. You have the original magazine?

13 A. Yes.

14 Q. Did you bring it with you?

15 A. I think it's in -- yeah.

16 Q. Can we see it?

17 A. Sure.

18 **MR. HOUSH:** So the record's clear, my
19 client is handing Mr. Boron the original of
20 the exhibit.

21 **MR. MAZZOLA:** He said there were two.

22 **MR. BORON:** Are there two copies of it
23 in there?

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1 **MS. HORN:** No, I have a different one in
2 here. I don't think so.

3 **MR. BORON:** Okay. That's a different
4 addition?

5 **MR. MAZZOLA:** Yeah.

6 **MR. HOUSH:** They're going to take
7 everything that you -- just put that back in
8 your thing.

9 Just so the record is clear, my client had
10 a separate and unrelated copy of High Times
11 that opposing counsel is now taking.

12 **MR. BORON:** I think this would be a
13 super time for a break.

14 **MR. HOUSH:** Great.

15

16 (Recess taken)

17

18 The following was marked for identification:

19 Exhibit 24 High Times Medical Marijuana
20 Magazine

21 **BY MR. BORON:**

22 Q. We're back on the record after a break.

23 Mr. Horn, you continue to be under oath. I'm

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1 showing you what's been marked as Exhibit 24
2 for this deposition. Would you agree with me
3 for the record this is a -- this is the actual
4 High Times magazine from which photocopies
5 that we were looking at on Exhibit 23 were
6 taken?

7 A. Correct.

8 Q. Okay. And for the record, this is the same
9 High Times magazine that you were testifying
10 earlier just before the break about having
11 purchased at a bookstore in Texas?

12 A. Correct.

13 Q. All right. You and your wife Cindy were
14 together at the time the magazine was
15 purchased, correct?

16 A. Correct.

17 Q. All right. Did you do some reading of the
18 magazine inside the bookstore or did you just
19 purchase it and bring it out of the bookstore
20 and read it?

21 A. We were inside the bookstore.

22 Q. How long were you in the bookstore?

23 A. For a little while.

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1 Q. Were you reading other magazines or just
2 focussed on this one?

3 A. We were reading other books and stuff.

4 Q. Okay. If you did purchase it with a credit
5 card -- I know you said you don't remember
6 whether you did or didn't. What kind of
7 credit cards did you have in 2012? Visa?
8 MasterCard? Do you remember what credit
9 cards?

10 A. It probably would have been a Visa.

11 Q. Visa?

12 A. Yeah.

13 Q. Discover? Visa?

14 A. It wouldn't have been Discover. I don't like
15 using Discover.

16 Q. Okay. Did you have more than one credit card
17 in your name in 2012?

18 A. Yeah, I had several.

19 Q. You had several?

20 A. Yeah, I had several.

21 Q. Were they all Visas?

22 A. No.

23 Q. Some MasterCard?

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1 A. Correct.

2 Q. You had a Discover card as well?

3 A. Correct.

4 Q. Okay. That's all in 2012, right? Do you have
5 your wallet with you? Do you have the same
6 cards today?

7 A. No, I've kind of changed cards. I use a
8 MasterCard right now strictly because it gives
9 me pronounced -- for tax reasons.

10 Q. Okay. Did you pay -- back in 2012 were you in
11 the habit of paying with a debit card from a
12 bank?

13 A. I believe so.

14 Q. Yeah. Which bank is that?

15 A. The bank I bank with.

16 Q. Which bank were you banking with in 2012?

17 A. Visions.

18 Q. Visions Bank?

19 A. Correct.

20 Q. Same today?

21 A. Yes.

22 Q. There's been no change?

23 A. No.

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1 Q. Do you have bank accounts at any other banks
2 besides Visions in 2012?

3 A. No.

4 Q. Just for the record, there's just a couple
5 things I want to make sure we do get on the
6 record. In the bottom right-hand corner the
7 cover of Exhibit 24 it says Fall 2012,
8 correct?

9 A. Correct.

10 Q. With a number 11 --

11 A. Correct.

12 Q. -- after that. And then there's a price
13 USA 5.99?

14 A. Correct.

15 Q. Is that what you paid for the magazine, 5.99,
16 to the best of your knowledge?

17 A. I don't know.

18 Q. You don't know, okay. What -- what articles
19 did you review in that magazine?

20 A. I just kind of skimmed through it.

21 Q. Were you just looking at the pictures or were
22 you reading articles?

23 A. I was just looking at articles and what the

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1 magazine was about.

2 Q. Had anybody recommended to you that you buy
3 this magazine?

4 A. No.

5 Q. Did you do all the skimming that you were
6 doing inside the bookstore?

7 A. Yes.

8 Q. Okay. And then once you purchased it and left
9 the bookstore was that -- was that the last
10 time you had looked at the magazine?

11 A. Pretty much.

12 Q. Did you show that magazine to anyone besides
13 lawyers?

14 A. No.

15 Q. Share anything in the magazine with Cindy's
16 mom?

17 A. No.

18 Q. Talk to Cindy's mom about anything you saw in
19 the magazine?

20 A. No.

21 Q. How about your daughters, did you share
22 anything about the information in the magazine
23 with your daughters?

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1 A. No.

2 Q. Did you give it to them to read. Did they
3 have any interest in reading it?

4 A. Nope.

5 Q. To your knowledge, has anybody besides you and
6 Cindy read any of the articles inside this
7 magazine?

8 A. Just me and her.

9 Q. Okay. Take a look with me if you would at
10 page 39 of Exhibit 24. It's Exhibit 24,
11 right? And then the page before is 38, right;
12 would you agree?

13 A. Yeah.

14 Q. And page 38 is the start of an article
15 entitled High & Healthy by Elise McDonough?

16 A. Okay, correct.

17 Q. You would agree with that?

18 A. Yes.

19 Q. And then there's an article she wrote?

20 A. Correct.

21 Q. Okay. Did you read that article?

22 A. No.

23 Q. You didn't read her article?

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1 A. No.

2 Q. Which articles in the magazine did you read?

3 A. Like I said, I skimmed through it.

4 Q. Do you have a recollection of reading any
5 article?

6 A. Just the -- this one.

7 Q. Does this say High & Healthy at the top of
8 page 42?

9 A. It does.

10 Q. Does it say High & Healthy at the top of the
11 page for the Elise McDonough article?

12 A. Correct.

13 Q. Does it say High & Healthy at the top of page
14 40 which is a portion of Elise McDonough's
15 article?

16 A. Correct.

17 Q. Were you interested in any of the recipes that
18 are listed in her article?

19 A. No.

20 Q. Did you review any of the recipes that are
21 listed in her article?

22 A. No.

23 Q. Have you or Cindy ever prepared the food

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1 according to those recipes that are listed in
2 that article?

3 A. No.

4 Q. Did you buy this magazine to review ads for
5 masking products for dirty tests?

6 A. Nope.

7 Q. You guys didn't bring the bottle, right?

8 A. Nope.

9 Q. Okay.

10

11 The following was marked for identification:

12 Exhibit 25 Three-pages of colored
13 photocopies of photographs

14 **BY MR. BORON:**

15 Q. I noticed when you brought this magazine out
16 on to the table it came out of a box that's
17 over on your side of the table. What else is
18 in the box?

19 A. Bad copies of e-mails that you guys asked for.

20 Q. Okay. Okay. Copies of documents and records
21 that you already turned over to us?

22 A. Correct.

23 Q. Okay. But there was a second magazine in

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1 there as well, correct?

2 A. Yeah.

3 Q. Are there --

4 A. Well, there's one other one. It's on cameras.

5 Q. Okay.

6 **MR. MAZZOLA:** What was that answer?

7 Q. There's another magazine on cameras in their
8 box. Why did you bring the three magazines?

9 A. It's been in that box for quite a few years.
10 That's just the way it was.

11 Q. It just randomly happened that all three of
12 those magazines were in that box?

13 **MR. HOUSH:** Object to form.

14 A. No, that's where I put them.

15 Q. Okay. Why did you put them in that box?

16 A. For safekeeping.

17 Q. Why was there safekeeping involved in the
18 camera magazine?

19 A. That just got thrown in there.

20 Q. How about this Best of High Times magazine?

21 A. That was in there probably for a reason that I
22 don't remember.

23 Q. Do you have any other boxes at home with

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1 information related to this case? Records?
2 Documents?

3 A. We have some scattered around, but you've
4 basically gotten everything. I have a lot of
5 misprinted things that didn't print out right.

6 Q. Do you have other e-mails that were exchanged
7 between yourself and Mr. Benjamin prior to the
8 lawsuit being commenced?

9 A. No.

10 Q. Did you exchange e-mails with Mr. Benjamin
11 before the lawsuit was commenced?

12 A. Nope.

13 Q. Did you meet him face-to-face before the
14 lawsuit was commenced?

15 A. Correct.

16 Q. Was that in his office?

17 A. Yes.

18 Q. In New York State?

19 A. Yes.

20 Q. Just one meeting with him?

21 A. Yes.

22 MR. HOUSH: Object to form.

23 MR. BORON: Okay.

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1 **MR. HOUSH:** We're getting perilously
2 close to the privilege issue.

3 **MR. BORON:** What kind of privilege?

4 **MR. HOUSH:** Attorney-client privilege.

5 **MR. BORON:** I think that's been waived.

6 **MR. HOUSH:** How so?

7 **MR. BORON:** There's been production of
8 e-mails between Mr. Benjamin and Mr. Horn.

9 **MR. HOUSH:** Well, that's the nature of
10 my objection. Whether there's a waiver or not
11 if you're going to start asking what he
12 discussed with his attorney we're going to
13 have a problem.

14 **BY MR. BORON:**

15 Q. Haven't got there yet, Frank. Okay. Did you
16 show this magazine to Mr. Benjamin?

17 A. Yes, I did.

18 Q. Have you shown it to anyone else besides an
19 attorney?

20 A. Nope.

21 Q. No one in your family?

22 A. Nope.

23 Q. Show it to Dr. Choi?

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1 A. No.

2 Q. Did you show it to the MDO?

3 A. What's the MDO?

4 Q. Dr. Ping. Oh, MRO?

5 A. No, I don't believe so.

6 Q. Mm-hmm. Did you send copies of the magazine
7 to any testing lab?

8 A. Not copies of the magazine, no.

9 Q. Copies of pages of the magazine?

10 A. No.

11 Q. No.

12 MR. MAZZOLA: Did you mark that magazine
13 as an exhibit?

14 MR. BORON: This one's marked.

15 MR. MAZZOLA: You did, okay.

16 BY MR. BORON:

17 Q. It's Exhibit 24. I am showing you what's
18 marked as Exhibit 25, Mr. Horn. For the
19 record, Exhibit 25 consists of three
20 photographs stapled together. They appear to
21 be photographs of a product of Dixie X. Would
22 you agree that there's three photographs
23 stapled together that make up Exhibit 25?

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1 A. Correct.

2 Q. Who took these photographs?

3 A. I did.

4 Q. When did you take them?

5 A. Last week.

6 Q. Where was the product when you photographed
7 it?

8 A. At home.

9 Q. On the kitchen table?

10 A. Pretty much.

11 Q. Well, was it a kitchen table?

12 A. Countertop.

13 Q. Countertop, okay. Would you look with me at
14 the second page. Over here on this side of
15 the picture, the right side of the picture of
16 the second page it looks like there was at
17 some point some kind of a -- something was
18 affixed or pasted to it?

19 A. Correct.

20 Q. What was that?

21 A. That was a batch number.

22 Q. A batch number?

23 A. Yes.

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1 Q. And do you still have the batch number?

2 A. I do not.

3 Q. What happened to it?

4 A. It got lost in the truck.

5 Q. Which truck?

6 A. The semi before when I got terminated because
7 I called Dixie X and they wanted the badge
8 number and it was like two pieces of paper on
9 here, gave them the batch number and then we
10 misplaced the label.

11 Q. Did that happen the day that you found out
12 that you had a dirty random sample?

13 A. Correct.

14 Q. How long has that batch label been lost?
15 Since that very day?

16 A. Since that day.

17 Q. You didn't purposely throw it out, did you?

18 A. No.

19 Q. Did you take a picture of it before it was
20 lost?

21 A. No, I didn't.

22 Q. Did you write down any information that was on
23 the batch label before you --

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1 A. I did and misplaced the paper.

2 Q. Well, while we're looking at this second page,
3 might as well go through a couple questions
4 here. You see where there's a heading on the
5 label, the second page of the exhibit that
6 says dosage.

7 A. Correct.

8 Q. It says place below the tongue for fast,
9 effective relief. Do you see that?

10 A. Yep.

11 Q. Is that the way you administered the dosage to
12 yourself?

13 A. Correct.

14 Q. And there's no direction on how much dosage to
15 use on any particular usage?

16 A. Correct.

17 Q. So how did you determine how much to use?

18 A. By the eye dropper.

19 Q. Okay. So the top unscrewed and there was an
20 eye dropper attached to it?

21 A. Yes.

22 Q. Did you fill the eye dropper to the top?

23 A. Yes.

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1 Q. And then you placed what was the entirety of
2 the eye dropper under your tongue?

3 A. Correct.

4 Q. What was the first day you did that?

5 A. I couldn't tell you. About 10 days before I
6 got fired, maybe 12.

7 Q. Had the first day that you took a dose, was
8 that the same day that it arrived in the mail?

9 A. No.

10 Q. How long was it before you took a dose?

11 A. It was at the house for at least a couple of
12 weeks that I know of.

13 Q. Was the product ordered by Cindy or you?

14 A. I believe it was by Cindy.

15 Q. And had Cindy already used the product before
16 you began to use it?

17 A. No, Cindy didn't use it.

18 Q. Cindy never used the product?

19 A. She tasted it and tried it.

20 Q. Was she the first one that tasted it and tried
21 it?

22 A. No.

23 Q. When you say it was at the house for a couple

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1 of weeks, are you -- are you just guessing at
2 that or do you have a definite memory it was
3 at the house for a couple of weeks?

4 A. It was at the house for a couple of weeks. I
5 had my daughter bring it to me because I
6 didn't have the hours to run and so she met me
7 in Pennsylvania.

8 Q. Which daughter brought it to you?

9 A. Elizabeth.

10 Q. That was the one that was living with you at
11 the time?

12 A. Correct.

13 Q. And did she bring you to the terminal in
14 Pennsylvania?

15 A. No, she brought it to a truck stop in
16 Pennsylvania.

17 Q. Had it been opened prior to that point in time
18 when you got it at the truck stop in
19 Pennsylvania?

20 A. No.

21 Q. Are you sure about that?

22 A. Positive.

23 Q. And why are you sure about that?

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1 A. Because it's my mail and it was a package.

2 Q. But was there tamper -- tampered proof cap on
3 the bottle?

4 A. It was sealed.

5 Q. It was sealed?

6 A. Correct.

7 Q. So the first time you unscrewed it did you
8 find a cover that had to be torn off?

9 A. Yeah, there was a seal on the box, it was
10 sealed and this product had a plastic
11 cellophane on it.

12 Q. So when your daughter brought it to you in
13 Pennsylvania, was it still in the box it had
14 been mailed in?

15 A. Correct.

16 Q. That box had never been opened?

17 A. That's correct.

18 Q. Where was the box stored?

19 A. I don't know. More than likely on the
20 countertop.

21 Q. When the box arrived in the mail, were you --
22 two of you out on the road?

23 A. Correct.

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1 Q. So was Elizabeth the only person living at the
2 house at that point in time?

3 A. Correct.

4 Q. Did Elizabeth have any friends over during the
5 time that you were on the road before you had
6 taken a dose?

7 A. No.

8 Q. How do you know that?

9 A. Because Elizabeth doesn't have friends. She's
10 a hermit.

11 Q. Okay. Did Elizabeth take a dosage of the
12 product?

13 A. No.

14 Q. Was there ever any intention of Elizabeth
15 trying the product?

16 A. No.

17 Q. Why not?

18 A. What for?

19 Q. Well, what was the product purchased for?

20 A. For my inflammation.

21 Q. Did you ask Cindy to purchase it for you?

22 A. Yeah, me and Cindy saw that and agreed that we
23 would try it.

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1 Q. Okay. So were you actually sitting in your
2 truck the first time you took a dose of this?

3 A. Yeah.

4 Q. And after you took the dose did you have any
5 reaction to it?

6 A. No.

7 Q. Did it change how your body felt in any way?

8 A. Not that I know of, no.

9 Q. Was that the time that Cindy tried the product
10 too at that point in time?

11 A. I don't remember when she tried it.

12 Q. Okay. Where were you when you took the
13 product? You were in your truck in
14 Pennsylvania?

15 A. More than likely, yeah.

16 Q. On your way where?

17 A. I don't remember.

18 Q. You weren't on your way home though?

19 A. No.

20 Q. You were going to do a delivery?

21 A. Correct.

22 Q. How did Elizabeth get out to where you were?
23 Did she drive herself?

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1 A. Yes.

2 Q. Did she own her own car at the time?

3 A. Yes.

4 Q. Did she bring you anything besides the
5 product?

6 A. No.

7 Q. Did she bring you any food to eat?

8 A. No.

9 Q. Any Dixie edible products?

10 A. No.

11 Q. Do you know what a Dixie edible product is?

12 A. I do.

13 Q. Have you ever eaten any of the Dixie edible
14 products?

15 A. No.

16 Q. Have you ever tasted any of the Dixie edible
17 products?

18 A. No.

19 Q. Did you read the information on the label
20 before you took it?

21 A. I did.

22 Q. All of it?

23 A. Yeah.

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1 Q. That includes the information on the label
2 that shows on the third page picture of
3 Exhibit 24?

4 A. I read that, yeah.

5 Q. Is there a Bates Number on that?

6 MR. BORON: No.

7 MR. MAZZOLA: No.

8 Q. Sticking with that second page of the exhibit,
9 the page that has a picture of the label that
10 has the heading Dosage, do you see where it
11 says this product was tested via HPLC?

12 A. Correct.

13 Q. Do you know what HPLC stands for?

14 A. I have no idea.

15 Q. You took a product that you had no idea what
16 the tests were that were done on it?

17 MR. HOUSH: Object to form.

18 A. Yeah.

19 Q. You didn't understand anything about the test
20 that was done?

21 MR. HOUSH: Object to form.

22 A. I don't know what HPLC is, no.

23 Q. And you didn't know anything about the testing

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1 of this product before you took it, correct?

2 **MR. HOUSH:** Object to form.

3 A. That it had zero percent THC.

4 Q. Did you review any testing results of the
5 product before you took it?

6 A. There weren't any offered.

7 Q. Do you see where the label continues on and
8 forms the consumer that it's manufactured
9 without any regulatory oversight for health
10 safety or ethicacy?

11 A. Correct.

12 Q. All right. And did that concern you in any
13 way knowing that you were subject to random
14 drug tests?

15 A. No, I took that as a -- like what vitamins say
16 that the FDA doesn't -- whatever vitamins say
17 on it. They have a statement on there.

18 Q. On the picture of the third page of
19 Exhibit 24, a picture of another section of
20 the labelling with reference to cannabinoids?

21 A. Correct.

22 Q. And CBD?

23 A. Correct.

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1 Q. Does cannabinoids indicate to you that this
2 product is coming from -- from a cannabis
3 plant from?

4 A. A medicinal plant like it says.

5 Q. What does the CBD acronym mean to you?

6 A. Cannabinoid.

7 Q. Okay. Did you know something about
8 cannabinoids at the point in time you were
9 taking the product?

10 A. I read an article --

11 Q. At the time you were taking the product?

12 A. Before I took the product. That it helped the
13 DNA in your cells.

14 Q. Which article is that?

15 A. I don't know if I produced that or not.

16 Q. I don't remember that being produced.

17 A. Okay. I had problems with my printer because
18 I was going to print it before I got here and
19 that was the only paper I did not print.

20 Q. Is it an article from a magazine?

21 A. It was online.

22 Q. Is that an article from High Times magazine
23 online?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 A. No, I don't think so.

2 Q. When did you read that article?

3 A. Before I bought the product.

4 Q. Before you bought it?

5 A. Yep.

6 Q. Did you print off the article?

7 A. I did and I thought I submitted that to
8 Jeffrey, but I guess not.

9 Q. Was there a print date on when you printed the
10 article?

11 A. I'm sure there was.

12 Q. Is it before or after your dirty random
13 sample?

14 A. It was probably after because I didn't get to
15 print it beforehand.

16 Q. Do you have the ability to print it tonight?

17 A. I have it in an e-mail. Yeah, I can actually
18 send it to somebody if they want to print it.

19 **MR. HOUSH:** Sent it to me. Do not send
20 it to anybody else, otherwise you'd be waiving
21 attorney-client privilege.

22 Q. Do you see the continuation of the information
23 on the label on the dosage section that says

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1 there may be health risks associated with the
2 consumption of the product?

3 A. Yeah.

4 Q. What health risks were there that may be
5 associated with this product?

6 A. I wouldn't know.

7 Q. You didn't research what health risks might be
8 associated with the consumption of the
9 product?

10 A. Uh-uh.

11 Q. Even though you knew that you could be tested
12 at any point in time after taking the product
13 for THC, correct?

14 A. Correct.

15 Q. Did you ask Dr. Choi about the product?

16 A. No.

17 Q. Did you ask anyone who knew anything about the
18 product what was in it?

19 A. No.

20 Q. Was this product recommended to you by
21 anybody --

22 A. No.

23 Q. -- that had taken it before you? You never

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1 talked to anybody that had taken it before
2 you?

3 A. Nope.

4 Q. Do you see the reference lower on the page
5 that we're looking at where it says that this
6 product is intended for use solely by the
7 patient to whom it was sold?

8 A. Okay.

9 Q. Were you somebody's patient at that time?

10 A. No.

11 Q. Were you being provided this product by a
12 doctor?

13 A. No.

14 Q. Is this product prescribed to you?

15 A. Nope.

16 Q. Is this a medical marijuana product?

17 A. I thought it was a hemp product.

18 Q. Looking at the next page, the ingredients
19 list. Do you see there's a list of
20 ingredients?

21 A. Correct.

22 Q. What is hemp whole plant extract?

23 A. I'm not a plant specialist so I would guess

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 that it's from the hemp plant.

2 Q. So you took a product you were just guessing
3 at what the ingredients were --

4 **MR. HOUSH:** Object to form.

5 Q. -- when you're subject to random drug tests?

6 **MR. HOUSH:** Object to form.

7 A. No, I actually went by Tripp Keber's testimony
8 on YouTube where he said this was a dietary
9 supplement and that everybody could take it
10 and it had zero percent THC.

11 Q. You call this testimony. Was this before a
12 court?

13 A. Yes, before I bought the product.

14 Q. The testimony was before a court that you saw
15 on YouTube?

16 A. He went on a radio shoot and was promoting
17 Dixie X. He said it was going to be in Whole
18 Foods by the end of the year nationwide.

19 Q. Did you listen to this radio broadcast?

20 A. Yes, we did.

21 Q. When was that?

22 A. I can't tell you the specific date. It was
23 probably in the beginning of September maybe.

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1 Q. September 2012?

2 A. Correct.

3 Q. Where were you when you listened to this
4 YouTube?

5 A. I don't remember.

6 Q. Were you at home?

7 A. I don't remember.

8 Q. Was Cindy watching the YouTube video at the
9 same time you were?

10 A. Correct.

11 Q. Was there anyone else watching it besides the
12 two of you?

13 A. No.

14 Q. Does anyone besides the two of you that knows
15 when you bought this Medical Marijuana -- I'm
16 sorry, this High Times Magazine that was
17 marked as Exhibit 24?

18 A. No.

19 Q. Anyone besides the two of you knows that you
20 two watched the YouTube video that you're
21 describing?

22 A. No.

23 Q. The photograph which is the third page of

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1 Exhibit 25 has a phone number at the bottom,
2 part of the phone number is cut off. Have you
3 ever called that phone number?

4 A. Yeah.

5 Q. When did you call?

6 A. Probably the day I got fired.

7 Q. Did you call the phone number before you took
8 the product?

9 A. No.

10 Q. Did you think to call the phone number to ask
11 what hemp whole plant extract was?

12 A. No.

13 Q. Did you think to call the phone number to ask
14 what health risks that might be associated
15 with consumption of the product?

16 A. Nope.

17 Q. Did you think to call the phone number when
18 the product label warned you that it was
19 manufactured without any regulatory oversight
20 for health safety or efficacy?

21 A. Nope.

22 Q. You said there's some -- some amount of the
23 product that remains in the bottle today?

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1 A. Correct.

2 Q. And it's at your home?

3 A. Correct.

4 Q. Where has it been stored all these years?

5 A. In the cupboard.

6 Q. Cupboard. Is an outside wall behind it or
7 inside wall behind it?

8 A. What do you mean outside, inside wall?

9 Q. Is the back of the cupboard up against an
10 outside wall of the house or is it a cupboard
11 that is not against an outside wall of the
12 house?

13 A. An outside wall of the house?

14 Q. Yeah.

15 A. Like is the outside on the other side of the
16 cupboard?

17 Q. Yeah.

18 A. Is that what you're saying?

19 Q. Yep.

20 A. Oh, I guess it is to the outside of the house.

21 Q. How come you never took the remainder for
22 testing?

23 A. Because after I had a new unopened specimen

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1 tested they told me not to send them anymore.

2 Q. Who told you that?

3 A. EMSL labs.

4 Q. When you found out that you had tested
5 positive for THC at that point in time you
6 only had the one bottle that was partially
7 used, correct?

8 A. Correct, it was almost all used.

9 Q. It was almost all used at that point?

10 A. Yeah.

11 Q. You're motioning with your fingers, that
12 doesn't translate to our record.

13 A. Yeah, it was probably about maybe an eighth of
14 the bottle left.

15 Q. Okay. Has anything been added to that bottle
16 since it's been opened?

17 A. No.

18 Q. Has anything been taken out of the bottle
19 besides the product itself?

20 A. Just the product.

21 Q. Did the product have a cinnamon flavor to it?

22 A. Yes, it did.

23 Q. Did anybody ever tell you that the remainder

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1 of that bottle would not be able to be tested
2 for THC?

3 A. No.

4 Q. Did you ask anybody if it could be tested for
5 THC?

6 A. No.

7 Q. Okay. So at some point in time then after you
8 tested positive for THC you ordered another
9 bottle of the same product?

10 A. Correct.

11 Q. Did you personally order that one as oppose to
12 Cindy having ordered the other one?

13 A. No, I had my daughter order it.

14 Q. Which daughter was that? Erica?

15 A. Nicole.

16 Q. Nicole. Why didn't you have Elizabeth order
17 it?

18 A. Don't know why.

19 Q. So Nicole put the order in for the second
20 bottle?

21 A. Correct.

22 Q. Did you ever order any additional bottles of
23 the Dixie X product?

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1 A. I'm not sure if I did.

2 Q. Did Nicole bring you the second bottle?

3 A. Correct.

4 Q. The one that you asked her to order?

5 A. Correct.

6 Q. You reimbursed her for the cost of the
7 product?

8 A. Correct.

9 Q. What did you do with the second bottle?

10 A. I sent it into the lab.

11 Q. Did you open it?

12 A. Nope.

13 Q. Did you take any labels off of it?

14 A. Nope.

15 Q. You sent the box --

16 A. I sent the box --

17 Q. -- completely unopened?

18 A. Yep, put it in an envelope and sent it to the
19 lab.

20 Q. You sent it through the U.S. Mail?

21 A. I'm not sure how I sent it.

22 Q. But it mailed in some way rather than
23 hand-delivered?

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1 A. Correct.

2 Q. Did you ever get a report from the EMSL lab?

3 A. Yes.

4 Q. A written report?

5 A. Yes.

6 Q. Have you produced that written report?

7 A. Yes.

8 Q. How many pages long was it?

9 A. Just one.

10 Q. One-page long report?

11 A. I just had them test it for THC and that's
12 what they gave me the result.

13 Q. Did you also order additional Dixie X
14 products?

15 A. I may have had my daughter.

16 Q. This is after you tested positive?

17 A. Yes.

18 Q. What else did you order from Dixie X products?

19 A. The SAV and the -- I think they called them
20 scripts. They were pill form.

21 Q. Was that your decision to order those products
22 or did an attorney tell you to order them?

23 A. No, I decided to order those.

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1 Q. And you ordered those because you wanted to
2 make a case against Dixie?

3 A. I was going to have them tested.

4 Q. These other products?

5 A. Yeah.

6 Q. You had no interest in consuming them
7 yourself?

8 A. No.

9 Q. You just wanted them to get tested?

10 A. Correct.

11 Q. Did you think that would help build your case
12 against Dixie?

13 A. Yep.

14 Q. Did you send those products out for testing?

15 A. Nobody wanted them. The EMSL Labs told me not
16 to send them anymore product and then I
17 contacted another lab which I don't remember
18 the name of in California and they didn't want
19 it either after I explained my situation.
20 They were afraid it would mess things up with
21 their lab.

22 Q. We're talking about the other products besides
23 this one --

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1 A. Correct.

2 Q. -- right?

3 A. Correct.

4 Q. So where are those products today?

5 A. In my cupboard.

6 Q. Did you see the product that you ordered from
7 Dixie X that is depicted in Exhibit 25
8 advertised on the television?

9 A. No.

10 Q. Did you see it advertised or did you -- did
11 you experience listening to an ad about it on
12 the radio?

13 A. Not on the radio, no.

14 Q. Was it advertised on a billboard that you saw?

15 A. Nope.

16 Q. Were there any door-to-door solicitors that
17 came by and told you about the product?

18 A. No.

19 Q. Did you receive a solicitation about the
20 product through the U.S. Mail?

21 A. No.

22 Q. After you tested positive you did some
23 research about the product online?

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1 A. I didn't really do any research, just that --
2 you know, nothing that I didn't do before I
3 took it.

4 Q. You did no research about the product after
5 you tested positive?

6 A. Well, I didn't really do any research
7 afterwards, no, except for looking at the
8 website where they changed the -- the facts in
9 question or frequently asked questions on
10 Dixie X and that they pulled their line of
11 explaining drug tasks and stuff like that.

12 Q. Did you purchase the product for pain relief
13 in your shoulder?

14 A. Correct.

15 Q. Okay. Do these labels indicate that they
16 provide pain relief to people that take the
17 product?

18 A. Not that label, no.

19 MR. MAZZOLA: What time are we going
20 until? Are we finishing at 5 or?

21 MR. BORON: Yeah, we'll finish at 5.

22 MR. MAZZOLA: Then what will I do with
23 my questions?

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DOUGLAS J. HORN - BY MR. BORON - 05/08/17

1 **MR. BORON:** That's a good question. Do
2 you want to take a short break and talk about
3 that?

4 **MR. MAZZOLA:** Yeah.

5

6 (Recess taken)

7

8 **BY MR. BORON:**

9 Q. We're back on the record after a break. You
10 continue to be under oath, Mr. Horn. You
11 testified about looking at a YouTube video.
12 Did you look at it on your own computer?

13 A. Yes.

14 Q. Was this your smartphone or a different
15 computer system?

16 A. I'm not sure.

17 Q. Do you have a home computer?

18 A. I do.

19 Q. What kind of computer? Mac?

20 A. I have several.

21 Q. You have several, okay?

22 A. I have Mac, Alien.

23 Q. Do you have any of the computers still today

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1 as we sit here today that you had in your
2 house in 2012?

3 A. Yes.

4 Q. The same hard drives?

5 A. Yep.

6 Q. Have those hard drives been wiped and cleaned?

7 A. One of them might have.

8 Q. Since 2012?

9 A. Yep.

10 Q. Did you ask any of your daughters to do
11 research after you had tested positive?

12 A. No.

13 Q. Ask anybody else to do research for you on
14 your behalf after you tested positive?

15 A. No.

16 Q. I'm going to say I'm done with Mr. Horn for
17 now. I reserve my right to -- to ask him
18 questions related to issues that Dixie counsel
19 raises in any questioning.
20

21 **EXAMINATION BY MR. MAZZOLA:**

22
23 Q. All right. Good afternoon, Mr. Horn. My name

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/08/17

1 is JC Mazzola, I'm an attorney and I represent
2 Dixie Elixirs. I understand we have to finish
3 in about 20 minutes; is that correct, Madame
4 Court Reporter, because we have to be out of
5 here at 5, so if I don't finish I direct at
6 your counsel is it okay if we come back and
7 bring him in tomorrow morning?

8 **MR. HOUSH:** You have seven hours.

9 They're both going to be here tomorrow morning
10 too, so I'm not going to try to make things
11 difficult.

12 Q. Great. Give me a moment. All right. When
13 you went to work at ICX, I think your
14 testimony earlier was that you told your new
15 employer that you were fired by -- and is
16 it --

17 A. Enterprise.

18 Q. Enterprise because you failed a drug test; is
19 that correct?

20 A. Correct.

21 Q. Did you tell them what kind of drug was
22 involved?

23 A. Yes.

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/08/17

1 Q. Did you tell them it was marijuana?

2 A. I told them it was THC.

3 Q. THC. And you've been making a distinction
4 between marijuana and THC. Why do you make
5 that distinction? You have to answer out
6 loud.

7 A. I don't know why I make that decision.
8 Because it seems like two different things
9 honestly.

10 Q. Okay. Why do you think that?

11 A. Marijuana is something you smoke.

12 Q. Did someone ever tell you there is a
13 distinction between THC and marijuana?

14 A. Did someone ever what?

15 Q. Did someone ever tell you there's a difference
16 between THC and marijuana?

17 A. No.

18 Q. In terms of DOT laws, regulations and
19 requirements is there a difference?

20 A. Not that I --

21 **MR. HOUSH:** Object to form.

22 Q. As you know?

23 A. Not that I know.

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/08/17

1 Q. When you went to work for Enterprise you
2 acknowledge on the paperwork -- and you're
3 familiar with the DOT rules and regulations;
4 isn't that correct?

5 A. Right.

6 Q. And those DOT rules and regulations they
7 relate to drug testing; is that correct?

8 A. Correct.

9 Q. We're going to mark this document, we'll call
10 it Exhibit 26.

11

12 The following was marked for identification:

13 Exhibit 26 Enterprise Products Company
14 Drug and Alcohol Plan

15 **BY MR. MAZZOLA:**

16 Q. Put that in front of you. Do you have a copy
17 for --

18 **MS. LINDSTROM:** I don't know if we have
19 another copy -- oh, yeah we do.

20 **MR. BORON:** I have a copy.

21 **MS. LINDSTROM:** Do you want it? I have
22 it here.

23 **BY MR. MAZZOLA:**

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/08/17

1 Q. Give it to counsel. Have you ever seen that
2 document before, Mr. Horn?

3 A. I don't remember seeing this type of document,
4 no.

5 Q. Okay. It does say Enterprise Company on it;
6 do you see that?

7 A. Yes.

8 Q. If you go to the back and you see where it
9 says ENT 943 on the bottom?

10 A. On the very back?

11 Q. Yeah. On the very bottom over there.

12 A. Oh, yeah.

13 Q. That's an indication that we got that from
14 Enterprise.

15 MR. HOUSH: Object to form.

16 Q. Okay. And if you look at the back of it there
17 will be a place for a signature; do you see
18 that? It's on page ENT 972; do you see that?

19 A. Correct.

20 Q. Okay. And you see the original date of -- now
21 let's go to the first page of that. Do you
22 see that -- now on that signature page your
23 signature is not on that, correct?

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/08/17

1 A. Correct.

2 Q. But do you have any reason to believe that
3 you've never seen this document before? I'm
4 holding up what we're calling Exhibit 26.

5 A. Yeah, I don't remember this.

6 Q. You don't remember ever seeing this?

7 A. Uh-uh. This says Enterprise Products.

8 Q. Yeah. What's the difference?

9 A. Enterprise Transportation was a different
10 division than Enterprise Products.

11 Q. What's the difference as you know it?

12 A. That's more refinery work.

13 Q. Okay.

14 A. Like natural gas.

15 Q. Okay. So is your testimony maybe that you
16 never saw this document?

17 A. It could be, yeah. I don't remember this.

18 Q. Okay. I'll take it back then. Let's look
19 at -- let's look at Exhibit 5. So are you
20 telling me you didn't see Exhibit 26, which is
21 right in front of you?

22 A. Yeah.

23 Q. All right. Now I've put back before you what

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1 we've called Exhibit 25; do you see that?

2 **MR. BORON:** You mean Exhibit 5.

3 Q. Exhibit 5, right?

4 A. Correct.

5 Q. Now you do acknowledge seeing that; is that
6 correct?

7 A. Correct.

8 Q. And if you look at that do you see where it
9 says position requirements? The very first
10 one; do you see that?

11 A. Correct.

12 Q. On that it says that you acknowledge, you're
13 familiar with the Title 49 of the code of
14 Federal Regulations; do you see that?

15 A. Yes.

16 Q. And you also indicate that you're familiar
17 with U.S. Department of Transportation Federal
18 Highway Administration parts 383; do you see
19 that?

20 A. Yep.

21 Q. And 387, 390 through 399; do you see that?

22 A. Yes, I do.

23 Q. And you also indicate that you're familiar

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1 with -- if you go to paragraph 2; do you see
2 that?

3 A. Yes.

4 Q. You indicate that you're familiar with CFR
5 Chapter 1, Subchapter B, Parts 117-179 and
6 380-397. Do you see that?

7 A. Correct.

8 Q. Now do you know that those legal provisions
9 that I've just read off to you that they
10 relate to controlled substance and alcohol use
11 in connection with operation of a truck and
12 DOT regulations; do you understand that to be
13 the case?

14 A. I don't know those specific things at the
15 moment, no.

16 Q. Okay. But you did -- but you did affirm that
17 you were familiar with those; isn't that
18 correct?

19 A. Correct. Correct.

20 Q. So I presume at the time you were familiar
21 with them, correct?

22 A. Correct.

23 Q. And so before you signed this and before you

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1 took the job at Enterprise you made certain
2 that you were familiar with these; is that
3 correct?

4 A. Correct.

5 Q. So what I was getting at earlier is I'm trying
6 to understand why you kept making this
7 distinction between THC and marijuana?

8 A. Well, because the THC that I took was in hemp,
9 not marijuana.

10 Q. Well, you do know that the use of marijuana is
11 in violation of the DOT regulations; isn't
12 that correct?

13 A. Correct. Correct.

14 Q. Okay. Let's look at -- let me ask you this
15 question: Why would you take -- because you
16 know that your employer had a zero tolerance;
17 is that correct?

18 A. Correct.

19 Q. And you know that all the employers in this
20 industry have a zero tolerance; is that
21 correct?

22 A. Correct.

23 Q. So you drop dirty, you get fired, right?

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/08/17

1 A. Correct.

2 Q. You know that they test for -- you know that
3 they're testing for marijuana, cocaine,
4 opiates and the like?

5 A. Correct.

6 Q. Okay. Why would you take something that you
7 learned about in a magazine about marijuana?

8 A. Well, we saw that and then, like I said, we
9 saw the video.

10 Q. Okay.

11 A. And there was actually a couple videos Dixie X
12 saying everybody can take it, it had no THC,
13 so why wouldn't I?

14 Q. But why does THC matter to you because it
15 doesn't say anywhere on the Enterprise Drug
16 and Alcohol Policy that you can't take
17 something -- that THC is prohibited? Do you
18 want to look at it with me?

19 A. No, I get what you're saying.

20 Q. No, let's look at it. It's Exhibit 11.

21 **MR. HOUSH:** Object to form.

22 Q. Let's look at that together, Exhibit 11.

23 A. Okay.

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/08/17

1 Q. So why would it matter if it's a THC issue?

2 A. Because THC is what gets you high to my
3 understanding.

4 Q. Okay. But it doesn't say anywhere on the
5 Enterprise thing that you can't take THC, it
6 says you can't take marijuana?

7 A. Correct, marijuana contains THC.

8 Q. Okay. So you were doing this analysis in your
9 mind that because something is -- you
10 understood it didn't have THC it was safe to
11 take and would not be in violation of both
12 Enterprise's requirements and DOT regulations,
13 right?

14 A. Correct.

15 Q. Okay. That was your understanding, right?

16 A. That's my understanding.

17 Q. And so what I'm trying to understand is then
18 that product that we're talking about is a
19 product that you first learned about in a
20 magazine called?

21 A. High Times.

22 Q. High Times, right?

23 A. Correct.

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1 Q. And it says Medical Marijuana on the top of
2 it, right?

3 A. Correct.

4 Q. And it has the little picture with a marijuana
5 leaf, right?

6 A. Correct.

7 Q. And it says on the cover Inside Cannabis
8 Farmers Market?

9 A. Correct.

10 Q. It says the word cannabis on this front page,
11 doesn't it?

12 A. Yep.

13 Q. So with all of that, why would you take
14 something which on its very packaging uses the
15 word cannabinoids?

16 MR. HOUSH: Object to form.

17 Q. Why would you use that?

18 MR. HOUSH: Object to form.

19 A. Because to my understanding that hemp has the
20 same cannabinoids as marijuana, but does not
21 get you high.

22 Q. Okay.

23 A. Okay. And you -- you know, through all the

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1 advertisements that they extracted the THC and
2 everything out of the hemp, that's why I took
3 it.

4 Q. Okay. Did you think it was -- you know, if
5 your livelihood was dependent upon this, do
6 you think it was a smart thing for you to do
7 to go buy something that you see referenced in
8 the magazine with the name marijuana in the
9 title? Do you think that was a smart thing to
10 do?

11 MR. HOUSH: Object to form.

12 A. I don't think it was a dumb thing to do
13 because it said CBD for everyone.

14 Q. Okay. Where did it say that?

15 A. On the ad for Dixie X.

16 Q. That's in the magazine, right?

17 A. Correct.

18 Q. That's the one we looked at earlier; is that
19 correct?

20 A. Correct.

21 Q. That was the ad where --

22 A. Yeah, it's titled CBD For Everyone.

23 Q. That's under where High & Healthy, right?

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1 A. Correct.

2 Q. When they say high, what do they mean by that?

3 A. I guess high.

4 Q. High like what? High on drugs?

5 A. High on drugs I would imagine.

6 Q. Okay. So we know this is true because you
7 said it earlier, before you purchased the
8 Elixir you had seen it referenced in that High
9 Times marijuana magazine; is that correct?

10 MR. HOUSH: Object to form.

11 A. Correct.

12 Q. Is that correct?

13 A. Correct.

14 MR. HOUSH: Object to form.

15 Q. Had you ever seen this Elixir referenced
16 anywhere before you saw it referenced in that
17 High Times magazine?

18 A. No.

19 Q. So the first time you ever knew there was a
20 product out there called Dixie Elixir was when
21 you saw it in this magazine, this Exhibit 24;
22 is that correct?

23 MR. HOUSH: Object to form.

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1 A. Correct.

2 Q. Okay. Prior to you picking up that magazine,
3 did anyone in your family ever say to you hey,
4 you've got this pain, maybe you should try
5 using a marijuana-based product?

6 A. No.

7 Q. Did anyone in your family prior to you picking
8 up that magazine for the first time say hey,
9 you got this pain, maybe you should try a
10 hemp-based product?

11 A. No.

12 Q. Okay. Did anyone in your family -- now listen
13 carefully, I'm talking about your family now,
14 okay?

15 **MR. HOUSH:** Object to form.

16 Q. Did anyone in your family say hey, you got
17 this pain, maybe you should use a cannabinoid
18 product?

19 A. No.

20 Q. Okay. Now we're going to go same set of
21 questions, but we're going to talk about other
22 people. So we asked earlier about your
23 family, your wife, your mother-in-law and

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1 everyone else. Now we're talking about the
2 whole world. Anyone in the whole world ever
3 say to you hey -- James they call you, right?

4 A. Yeah.

5 Q. James, you got this problem, maybe you should
6 go try a marijuana-based product; anyone say
7 that to you?

8 A. Nope.

9 Q. Prior to seeing it the first time in this,
10 Exhibit 24?

11 A. No.

12 Q. Okay, no one. What about, same question, did
13 they say you should try hemp-based product?

14 A. No.

15 Q. Or a cannabis -- cannabinoid-based product?

16 A. No.

17 Q. So why is it that you opened up that magazine
18 for the first time in Dallas sometime before
19 September 2012?

20 A. Why did I open it?

21 Q. Yeah.

22 A. It was on the table when we were having
23 coffee.

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1 Q. Were there other magazines to look at?

2 MR. HOUSH: Object to form.

3 A. Oh, there were.

4 Q. Okay. There wasn't like a car magazine, a
5 photograph magazine?

6 A. Not at the table that we were sitting down at.

7 Q. It was just that magazine?

8 A. Correct.

9 Q. Okay. So you opened it up?

10 A. Yep.

11 Q. And what drew you to the -- the article? What
12 drew you to that article?

13 A. Just the CBD for everything -- for everyone.

14 Q. But why I just asked you --

15 MR. HOUSH: Object to form. If you let
16 him finish his answer.

17 A. I don't really have an answer why.

18 Q. Let me ask the same series of questions I
19 asked before. If you recall I was asking you
20 about marijuana?

21 A. Correct.

22 Q. Hemp, cannabinoids. So prior to you opening
23 up that magazine for the first time ever in

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1 your life, which was the first time ever in
2 your life you knew about this Dixie Elixir
3 product, did anyone ever say to you hey,
4 James, maybe you should try a CBD-type product
5 for your back and shoulder?

6 A. No.

7 Q. No one?

8 A. No.

9 Q. No one in the family --

10 A. I never heard of CBD before I read that there.

11 Q. So why that article?

12 A. I don't know why.

13 Q. Okay. You just happened to read that article?

14 **MR. HOUSH:** Object to form.

15 A. Just CBD --

16 Q. And other than that article, okay, now we're
17 talking about prior to you purchasing this
18 product, okay, the Dixie Elixir, did you see
19 any other articles about the Dixie Elixir in
20 print?

21 A. Prior too this?

22 Q. Yes.

23 A. No.

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1 Q. Okay. And then prior to you purchasing it,
2 did you see anything?

3 A. Prior to me purchasing?

4 Q. Yeah.

5 A. I went online and --

6 Q. Okay. Let me look at the timeline right over
7 here. You didn't actually purchase it, Cindy
8 actually made the purchase, right?

9 A. Correct.

10 Q. And -- and Cindy made that purchase sometime
11 in September?

12 A. September 19th.

13 Q. 2000 -- you recall September 19th?

14 A. September 19th.

15 Q. 2012?

16 A. Correct.

17 Q. How is it that you recall that date?

18 A. Because I just pulled the receipt up.

19 Q. Just now?

20 A. Just last week.

21 Q. Why did Cindy buy it?

22 A. No particular reason.

23 Q. Why didn't you buy it?

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1 **MR. HOUSH:** Object to form.

2 A. I don't have an answer for that. Sometimes
3 she buys stuff, sometimes I buy stuff.

4 Q. Was your credit card overdrawn or something?

5 **MR. HOUSH:** Object to form.

6 A. No.

7 Q. Did Cindy ever use the product?

8 A. She tried it once.

9

10 The following was marked for identification:

11 Exhibit 27 Invoice and Packing Slip
12 dated September 17, 2012

13 **BY MR. MAZZOLA:**

14 Q. I'm going to make a compiled exhibit over
15 here, I'm going to hand you over, Mr. Horn,
16 what we'll call Exhibit 27. That's a
17 composite exhibit, it's a two-page document.
18 It contains a packing slip and an invoice; do
19 you see that document?

20 A. Yes.

21 Q. Does that confirm for you and me that that's
22 the day that your wife purchased the Dixie
23 Elixir?

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1 A. Correct.

2 Q. Okay. But you don't know why it was that your
3 wife purchased it for you?

4 MR. HOUSH: Object to form.

5 A. No particular reason why.

6 Q. So I was asking now -- so prior to that
7 purchase occurring we know that you learned
8 about the Dixie Elixir in this magazine,
9 right?

10 MR. HOUSH: Object to form.

11 A. Mm-hmm.

12 Q. Did you see anything after this magazine,
13 which was the first time you saw it, and the
14 date of the purchase --

15 MR. HOUSH: Object to form.

16 Q. -- about the Dixie Elixir? Anything? In any
17 sort of media format?

18 MR. HOUSH: Object to form.

19 A. We went to their website.

20 Q. All right. We're going to talk about that.
21 Anything else?

22 A. We looked at the article on MJMA.

23 Q. Okay. Anything else?

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1 A. Just a few articles that we read about, Red
2 Dice Holdings and MJMA being a non-THC
3 company.

4 Q. MJMA, what's that mean?

5 A. I don't know what that's for, Medical
6 Marijuana.

7 Q. .com?

8 A. Yeah, that's what kept coming up when we did
9 research for Dixie X and Red Dice.

10 Q. Okay. So MJMA.com?

11 A. Yes, I guess that's what it is.

12 Q. So is that an online magazine, is it an
13 online --

14 A. No, there were articles about MJMA when we
15 would search for Dixie X.

16 Q. Okay. And where would you see those articles?

17 A. Online.

18 Q. Okay. So you would go on the Internet after
19 you purchased this magazine, you and Cindy --
20 was Cindy with you when you did this?

21 A. Yep.

22 Q. Okay. So the two of you would go on the
23 Internet if you were at home or in a Starbucks

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1 someplace, but you were on your computer,
2 right?

3 A. Correct.

4 Q. And so the two of you went on the Internet and
5 you searched for this product --

6 A. Correct.

7 Q. -- Dixie Elixir? Okay. And in doing that you
8 came across -- you're calling them articles;
9 is that what you said they are?

10 A. Correct.

11 Q. Okay. So when you say "article," what does
12 that mean to you?

13 A. Just a -- like a news article.

14 Q. Okay. Someone was writing --

15 A. Someone was reporting.

16 Q. Say that again.

17 A. Someone was reporting.

18 Q. Someone was reporting on Dixie Elixir; is that
19 correct?

20 A. Correct.

21 Q. And someone was reporting on like a review,
22 maybe?

23 A. Correct.

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1 Q. But it was something that was produced by
2 something other than Dixie Elixir; is that
3 correct?

4 A. Correct.

5 Q. And what did -- what did those articles tell
6 you?

7 A. That they were just basically a new company
8 and this Dixie X was coming out and that MJMA
9 was a non-THC company. I mean, they made sure
10 they stressed that.

11 Q. And when you say they made sure they
12 stressed --

13 A. The article did, yes.

14 Q. The article did and the person who wrote the
15 article, correct?

16 A. Yes, when they described MJMA they say a
17 non-THC company.

18 Q. So the "they" is the person who wrote the
19 article; is that correct?

20 A. Correct.

21 Q. So the they is not Dixie Elixir?

22 A. No. No.

23 Q. Is that correct?

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1 A. Correct.

2 Q. The "they" is not Red Dice; is that correct?

3 A. Correct.

4 Q. The "they" is not Medical Marijuana, Inc.; is
5 that correct?

6 A. Correct.

7 Q. And the "they" is not Dixie Botanicals; is
8 that correct?

9 A. Correct.

10 Q. So the "they" is someone else?

11 A. Correct.

12 Q. So those are the articles you're talking
13 about, right?

14 A. That's some of them.

15 Q. That is correct?

16 A. That's correct.

17 Q. That's one of the articles or a couple of the
18 articles?

19 A. There were a couple of articles there.

20 Q. And were all those articles the same in style,
21 tenor, and tone?

22 A. Pretty much, yeah.

23 Q. And so all those articles that you're

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1 referring to, the "they" is not Dixie Elixir?

2 **MR. HOUSH:** Object to form.

3 Q. He can answer the question. Dixie Elixir; is
4 that correct?

5 A. Correct.

6 Q. The "they" is not Medical Marijuana; is that
7 correct?

8 A. Not on those specific articles, correct.

9 Q. And the "they" is not Red Dice?

10 A. Correct.

11 Q. And the "they" is not --

12 **MR. HOUSH:** Object to form.

13 Q. -- Dixie Botanicals?

14 **MR. HOUSH:** Object to form.

15 Q. -- is that correct?

16 **MR. HOUSH:** Object to form.

17 Q. Right? Correct?

18 A. Correct, on those articles.

19 Q. So those are the articles?

20 **MR. HOUSH:** It's 5 o'clock.

21 Q. Okay. I'm going to finish up this line of
22 questioning. Is that okay with you, Marissa?
23 So we've got this article, correct?

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1 A. Correct.

2 Q. In Exhibit 24. We got the articles we just
3 talked about?

4 A. Correct.

5 Q. All right. Now our timeline is the first day
6 you ever saw this in Exhibit 24 and the day
7 you purchased it, so that's my timeline I'm
8 working with, you understand that, right?

9 A. Right. Right.

10 Q. So we got the article in Exhibit 24, right?
11 Is that correct?

12 A. Correct.

13 Q. You saw that?

14 A. Right.

15 Q. Then we got the articles that you saw on the
16 Internet; is that correct?

17 A. Yes.

18 Q. What else did you see?

19 A. We went to Dixie's website.

20 Q. You went to Dixie's website, okay. And what
21 did you see on Dixie's website?

22 A. That they said that they followed all
23 controlled substance laws.

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1 Q. Okay. Who is "they"?

2 A. Dixie X.

3 Q. That Dixie the company said this?

4 A. Correct.

5 Q. Okay. They said what?

6 A. That they followed all Federal controlled
7 substance laws.

8 Q. What else did they say?

9 A. That it had no THC.

10 Q. It said no THC?

11 A. Yep.

12 Q. Okay. Anything else?

13 A. There was other things there, but that's all
14 that I was looking for.

15 Q. Okay.

16 MR. HOUSH: So how long are we going
17 past 5?

18 MR. MAZZOLA: Well, seeing that it's
19 only 30 seconds.

20 MR. HOUSH: Well, you said -- we made a
21 big thing about stopping right at 5 and you
22 said you were going to finish with this line
23 of questioning.

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1 **MR. MAZZOLA:** You know, seeing that it's
2 35 seconds past 5 I'm going to have to
3 guesstimate about nine minutes to 10 minutes
4 past 5.

5 **MR. HOUSH:** All right. Well, then I
6 need to make a call.

7 **MR. MAZZOLA:** Okay.

8
9 (Recess taken)

10
11 **MR. MAZZOLA:** We're back on the record.
12 I will be finished in about five to 10
13 minutes, but we'll come back on tomorrow; is
14 that correct?

15 **MR. HOUSH:** I mean, you have seven
16 hours.

17 **MR. MAZZOLA:** Okay.

18 **MR. HOUSH:** So, you know.

19 **MR. MAZZOLA:** So we're back on the
20 record --

21 **MR. BORON:** Marissa's computer -- if
22 we're worried about the seven hours her
23 computer will show.

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1 **MR. HOUSH:** I'm not trying to suggest
2 otherwise.

3 **MR. BORON:** No, I don't think we're near
4 seven hours.

5 **MR. HOUSH:** I'm not trying to suggest
6 otherwise. I'm just saying they're both going
7 to be here tomorrow, you have seven hours.

8 **BY MR. MAZZOLA:**

9 Q. Okay. We're back on the record. Mr. Horn,
10 you understand we're back on the record and
11 it's the same rules apply that Mr. Boron gave
12 you that you're still under oath; you
13 understand that, correct?

14 A. Correct.

15 Q. You also understand that even though you take
16 breaks you're not allowed to talk about your
17 testimony with anyone; you understand that?

18 A. Correct.

19 Q. So I will presume that there were no
20 conversations during this break with anyone
21 about your testimony; is that correct?

22 A. Correct.

23 Q. Okay. So we were talking earlier about how

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1 you went on the Dixie website; is that
2 correct?

3 A. Correct.

4 Q. And the time period we're talking about,
5 again, is from when you first discovered this
6 Elixir even existed to the date that you
7 purchased it or your wife purchased it; is
8 that correct?

9 A. Right.

10 Q. I don't care about what happened the day
11 after -- well, I don't care what happened
12 after the day you dropped dirty, I'm just
13 talking about that timeline, okay, from the
14 date you first discovered it to the date your
15 wife purchased it, okay?

16 A. Okay.

17 Q. You went on the Dixie website; is that
18 correct?

19 A. Correct.

20 Q. And you saw that "they," being Dixie, said
21 that they comply with all Federal controlled
22 substance laws; is that correct?

23 A. Correct.

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1 Q. Do you know what those Federal controlled
2 substance laws were?

3 A. No.

4 Q. Okay. Did you bother to look at them?

5 A. No.

6 Q. Okay. And that the product contained in your
7 quote was no THC; is that correct?

8 A. Correct.

9 Q. Okay. Did you look at anything else on that
10 website?

11 A. Dixie X's?

12 Q. Yes.

13 A. Just the four products that they had for sale.

14 Q. Okay. And you read about those four products?

15 A. Correct.

16 Q. Okay. Was there anything else that you can
17 recall seeing on that website that prompted
18 you purchase the Dixie Elixir?

19 A. No.

20 Q. Just those two things, no THC and they comply
21 with all Federal controlled substance laws; is
22 that correct?

23 A. Correct.

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1 Q. Anything else?

2 A. Not that I can recall, no.

3 Q. Okay. Did you print off those screenshots
4 from the website when you looked at them?

5 A. I did.

6 Q. At that -- simultaneously -- or not
7 simultaneously, contemporaneously? Did you do
8 it then?

9 A. No.

10 Q. Okay. When did you print those screens?

11 A. The day I got fired.

12 Q. Okay. So that would be October 12, 13?

13 A. Correct.

14 Q. Okay. But before making the purchase and
15 before using the Elixir for the first time did
16 you print off those screens?

17 A. No.

18 Q. Okay. Did someone ever tell you that you
19 could take a marijuana-based product safely
20 and not be in violation of DOT regulations if
21 it contained no THC? Did anyone ever tell you
22 that?

23 A. No.

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1 Q. Okay. Did anyone ever tell you, ever, before
2 you purchased it and before you used it that
3 you could take a hemp-based product that
4 contained no THC and not be in violation of
5 DOT regs?

6 A. We've taken other hemp products.

7 Q. Who's "we"?

8 A. Me and Cindy.

9 Q. Okay. When did you do that?

10 A. We've taken them, say, over the years.

11 Q. Okay. When?

12 A. I don't remember what dates.

13 Q. Okay. We're going to get to that in a second,
14 but before -- between the time you first
15 learned of this product and the time you
16 purchased it and first used it, during that
17 time period, did anyone say hey, you know
18 what, James, you can use a hemp-based product
19 if it doesn't contain THC and not violate DOT
20 regs?

21 MR. HOUSH: Object to form.

22 Q. During that time period did anyone tell you
23 that?

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1 A. No.

2 Q. During your whole life -- whole life --
3 scratch that.

4 Did anything on the website -- Dixie's
5 website say you can take a marijuana-based
6 product if it does not contain THC and not
7 violate DOT regs?

8 A. It didn't say anything about DOT, no.

9 Q. Did it say anything about taking a marijuana
10 hemp-based product without THC and not
11 being -- not being in violation DOT regs?

12 **MR. HOUSH:** Object to form.

13 A. Not on DOT, no.

14 Q. Okay. Why do you say not on DOT? Did it say
15 something similar regarding something else?

16 A. Well, when they said that it followed Federal
17 controlled substance laws I assume that that's
18 what that means, that, you know, there's
19 controlled substances, you know, you either
20 have to have a prescription or it's illegal,
21 so that was pretty much a blanket statement.

22 Q. Okay. That's what you understood it?

23 A. That's the way I understood it.

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1 Q. On that Dixie website was there anything that
2 led you to believe that you could take their
3 product and not violate a drug testing
4 regulation?

5 A. Did I what now?

6 Q. Was there anything -- Madame Court Reporter,
7 will you read that back?

8

9 (Record read back by reporter)

10

11 **THE WITNESS:** With a zero percent THC, I
12 was under that impression, yes.

13 **BY MR. MAZZOLA:**

14 Q. Did they say you can take this product and you
15 won't be in violation of a drug testing
16 regulation?

17 **MR. HOUSH:** Object to form.

18 A. No.

19 Q. What's the answer?

20 A. They did not say that on the website.

21 Q. Okay. All it said was zero THC in your words,
22 right?

23 A. That's what it said on the website.

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1 Q. But it didn't say sleep easy, you can take
2 this and you can take any drug test and pass;
3 did it say that?

4 MR. HOUSH: Object to form.

5 A. No.

6 Q. Did it say on the website don't worry, you can
7 take this and operate heavy machinery; did it
8 say that?

9 A. No.

10 Q. Okay. Did it say aircraft pilots of the
11 world, don't worry, you can take this and fly
12 aircrafts all over North America; did it say
13 that?

14 A. No.

15 Q. Did it say truck drivers of America, don't
16 worry about it, you can take this product and
17 beat DOT regulations; did it say it?

18 A. Uh-uh.

19 Q. No?

20 A. No.

21 Q. Okay. We were talking about -- let's --
22 before we go on to the other hemp products I
23 want to understand something else now. So you

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1 learned about our -- the Dixie Elixir products
2 in this magazine called Marijuana, right?

3 **MR. BORON:** High Times.

4 Q. High Times. High Times Marijuana, Exhibit 24,
5 right? Right; is that correct?

6 A. Right.

7 Q. You then went on the Internet and you read
8 articles about the Dixie Elixir product; is
9 that correct?

10 A. Correct.

11 Q. Okay. This is between the time you first
12 learned of it and the time you first bought it
13 and then used it; is that correct?

14 A. Correct.

15 Q. Okay. And then we also just learned that
16 you've also went to the Dixie website?

17 A. Correct.

18 Q. And you researched the product; is that
19 correct?

20 A. Yep.

21 Q. Okay. Other than those three things, reading
22 about it in the magazine entitled Marijuana,
23 learning -- reading about it on articles on

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1 the Internet, and reading about it on the
2 Dixie website, did you do any other research
3 about this product before purchasing it and
4 taking it?

5 A. Just the YouTube video.

6 Q. Okay. We'll talk about that, the YouTube
7 video. Anything else?

8 A. And they directed you to the MJMA website.

9 Q. Okay. Anything else?

10 A. That's pretty much it.

11 Q. Okay. The YouTube video, what was the YouTube
12 video?

13 A. It was an interview with Tripp Keber.

14 Q. Okay.

15 A. Promoting Dixie X.

16 Q. When did you see that video?

17 A. I don't remember what date.

18 Q. But during this period of time, right?

19 A. It was before we purchased it, yeah.

20 Q. And after you first learned about the product
21 in this magazine called Marijuana, right?

22 A. Correct. Correct.

23 MR. HOUSH: I had -- I had made an

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1 appointment for 5:30 when earlier we said we
2 were leaving at 5.

3 MR. MAZZOLA: Okay.

4 MR. HOUSH: So if we're going to be
5 continuing to go on and on, I tried to reach
6 my -- the person I was supposed to meet at
7 5:30 and they weren't available.

8 MR. MAZZOLA: Okay. Where's your
9 appointment?

10 MR. HOUSH: 128 Genesee, Counsel. I can
11 give you her cell phone number if you would
12 like to try to reach her?

13 MR. MAZZOLA: Okay. I'll be done in six
14 minutes and then I'll reserve to continue for
15 tomorrow then.

16 MR. HOUSH: You said that -- all right,
17 whatever.

18 BY MR. MAZZOLA:

19 Q. I did say that eight minutes ago, that's
20 correct.

21 Let's talk about the YouTube video. You
22 watched this video?

23 A. Correct.

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1 Q. Who did you watch it with?

2 A. Cindy.

3 Q. Anyone else watch it with you?

4 A. No.

5 Q. Did you make a copy of the YouTube video?

6 A. No.

7 Q. Did you take a screenshot video?

8 A. No.

9 Q. Did the YouTube video contain a date on it?

10 A. I'm not sure.

11 Q. A date stamp?

12 A. I don't know.

13 Q. What was the sum and substance of the YouTube
14 video?

15 A. Dixie X and the four products that they sold.

16 Q. Okay.

17 A. That it was a dietary supplement made from
18 hemp and it was going to be in Whole Foods and
19 that if you wanted to know what hemp would
20 help, it would help inflammation and pain and
21 you could go to MJMA's website and read more
22 information on the benefits of hemp.

23 Q. Okay. On that YouTube video did Tripp Keber

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1 say that it had zero THC in it?

2 A. I believe so, yes.

3 Q. Okay. Do you know so?

4 A. It's been a long time, so -- but I was under
5 the impression yes.

6 Q. Okay. Did Tripp Keber say -- was anyone else
7 talking in the video?

8 A. Just the interviewer and Tripp Keber.

9 Q. Okay. Did Tripp Keber say hey, truck drivers
10 of America, you can purchase our product and
11 you will beat DOT regulations testing; did it
12 say that?

13 A. Nope.

14 Q. Did anyone -- did Tripp Keber say hey, truck
15 drivers of America, purchase our product use
16 it for pain, don't worry you don't be in
17 violation of any DOT regulations; did he say
18 that?

19 A. No, but it was implied.

20 Q. Okay. But did he say that?

21 A. No.

22 Q. So why do you say it was implied?

23 A. He said everybody could take it, it's like a

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1 dietary supplement.

2 Q. Did he say people that operate heavy machinery
3 can take it?

4 MR. HOUSH: Object to form.

5 Q. Did he say that?

6 A. No.

7 Q. Did he say airplane pilots can take it?

8 A. No.

9 Q. Did he say people subject to drug testing can
10 take it?

11 MR. HOUSH: Object to form.

12 A. No.

13 Q. Did he say that?

14 A. No.

15 Q. Did he say military people can say that?

16 MR. HOUSH: Object to form.

17 A. No.

18 Q. Okay. He just said everybody can take it,
19 that's what you remember, right?

20 A. Yes, it's a dietary supplement and usually
21 pilots can take dietary supplements and heavy
22 machinery operators.

23 Q. Okay. But he didn't say you could; is that

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1 correct?

2 **MR. HOUSH:** Object to form.

3 Q. Is that correct?

4 **MR. HOUSH:** Object to form.

5 Q. You can answer. Is that correct?

6 A. Did he say what?

7 Q. He didn't say that heavy machine operators
8 could take this product?

9 A. He didn't say that.

10 Q. Okay. He didn't say truck drivers could take
11 this product; is that correct?

12 A. Well, I would think that with everybody can
13 take it that would be a blanket statement.

14 Q. You know what, just answer the question.

15 **MR. HOUSH:** I'm going to ask you to not
16 talk to my client that way.

17 Q. Just answer the question please.

18 A. I was under the impression that everybody
19 could take it no matter what.

20 Q. Could the court reporter read back the last
21 question?

22

23 (Record read back by reporter)

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1

2

BY MR. MAZZOLA:

3

Q. He didn't say truck drivers could take that product; isn't that correct?

4

5

A. No, not that I know of.

6

Q. Okay. So in the video they referred you to the MJMA.com website. Did you go to that website?

8

9

A. Yeah, I did.

10

Q. And what did you see on that website?

11

A. It was a little confusing, but it talked about how hemp helped inflammation and pain.

12

13

Q. Anything else?

14

A. That was about all I was looking for.

15

Q. Did it say anything -- did it make any representations regarding the product that you purchased?

17

18

A. No, I don't recall. No.

19

Q. Okay. Do you understand that MJMA was an acronym for Medical Marijuana?

20

21

A. Yeah.

22

Q. Okay. So when you went to the website you knew that it was a marijuana-based business;

23

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1 is that correct?

2 A. No, I always thought they weren't.

3 Q. I just asked you did you understand MJMA to
4 make reference to Medical Marijuana, you said
5 yes?

6 A. Correct, but what I've read that they're a
7 non-THC company.

8 Q. Okay. Why does that matter to you?

9 **MR. HOUSH:** Object to form.

10 Q. You can answer that.

11 A. I don't know why it matters to me.

12 Q. Okay. Is THC what makes it marijuana?

13 A. No, THC is what was in the hemp that they
14 extracted.

15 Q. Okay. Let's talk about hemp.

16 **MR. HOUSH:** Okay. So we're going to
17 continue on? It's 20 after 5.

18 Q. All right. We will continue tomorrow. I just
19 want to get these questions on the record.

20 You talked about you and your wife have
21 taken other hemp products over the years; is
22 that correct?

23 A. Correct.

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1 Q. What other hemp products have you and your
2 wife taken?

3 A. Hemp milk.

4 Q. Hemp milk. Why?

5 A. Why not?

6 Q. Okay. What else?

7 A. Hemp shampoo.

8 Q. Okay. What else?

9 A. That's about all -- I don't know if we took
10 seeds or not. I know we though about it.
11 Hemp hearts.

12 Q. Hemp hearts?

13 A. Mm-hmm.

14 Q. Okay. What else?

15 A. That's all I can remember.

16 Q. And for how long a period have you taken these
17 hemp -- used these hemp products, over what
18 time period?

19 A. These are a while back.

20 Q. How far back?

21 A. I don't remember.

22 Q. In 2012 were you taking those products?

23 A. No.

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1 Q. Okay. 2011?

2 A. Possibly, yeah.

3 Q. 2010?

4 A. Possibly.

5 Q. Okay. Anything else? Any other hemp
6 products?

7 A. Not that I can remember, no.

8 Q. Okay. So hemp hearts, hemp seeds possibly,
9 right? Right?

10 A. Possibly.

11 Q. Okay. Hemp shampoo?

12 A. Right.

13 Q. And hemp milk?

14 A. Yep.

15 Q. Okay. What turned you on to taking hemp
16 products?

17 A. It's suppose to be help -- healthy.

18 Q. Healthy, okay. All right. We'll finish up
19 tomorrow. You're still under oath, so just so
20 the records clear while you're still under
21 oath that means you can't talk to anyone about
22 your testimony, even your wife or your lawyer.

23 A. Okay.

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1 Q. No one, okay?

2 MR. BORON: Thanks, folks. See you
3 tomorrow.

4
5 (Deposition adjourned at 5:21 p.m.)

6 * * * * *

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1 STATE OF NEW YORK)

2) ss.

3 COUNTY OF ERIE)

4
5 I, MARISSA A. ASHCROFT, Notary Public, in and
6 for the County of Erie, State of New York, do
7 hereby certify:

8 That the witness whose testimony appears
9 hereinbefore was, before the commencement of
10 their testimony, duly sworn to testify the
11 truth, the whole truth and nothing but the
12 truth; that said testimony was taken pursuant
13 to notice at the time and place as herein set
14 forth; that said testimony was taken down by
15 me and thereafter transcribed into
16 typewriting, and I hereby certify the
17 foregoing testimony is a full, true and
18 correct transcription of my shorthand notes so
19 taken.

20
21 I further certify that I am neither counsel
22 for nor related to any party to said action,
23 nor in anyway interested in the outcome
thereof.

24
25 IN WITNESS WHEREOF, I have hereunto
26 subscribed my name and affixed my seal this
27 8th day of May, 2017.

28
29 

30 -----
31 MARISSA A. ASHCROFT, Notary Public

32
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\$	82:21, 83:2, 83:3, 83:22, 85:11, 86:21, 215:10, 260:20, 260:22 112 [1] - 101:7 116 [1] - 4:5 117-179 [1] - 258:5 11th [4] - 130:2, 130:4, 199:21, 200:12 12 [12] - 4:2, 7:10, 7:14, 9:1, 9:21, 89:2, 91:15, 98:5, 191:6, 192:10, 227:6, 283:12 12's [1] - 91:17 12.75 [3] - 35:23, 36:6, 36:13 124 [1] - 101:8 125 [2] - 189:11, 189:18 126 [1] - 4:6 128 [1] - 290:10 129,254 [1] - 185:7 12th [1] - 130:3 13 [7] - 4:3, 100:18, 100:22, 100:23, 101:1, 101:2, 283:12 14 [8] - 1:13, 2:9, 4:5, 116:16, 116:20, 189:4, 189:5, 189:8 14202 [1] - 2:5 14203 [1] - 2:10 143 [7] - 4:7, 4:8, 4:9, 4:10, 4:11, 4:12, 4:13 14859 [1] - 5:8 15 [6] - 4:6, 15:10, 76:13, 126:20, 127:1, 134:10 15-cv-701-FPG [1] - 1:6 156,196 [1] - 185:12 15th [1] - 154:9 16 [8] - 4:7, 48:22, 143:14, 144:14, 144:15, 147:19, 147:20, 183:15 167 [1] - 80:12 16A [3] - 166:3, 166:4, 166:9 17 [10] - 4:8, 4:21, 41:4, 143:15, 152:20, 165:22, 166:3, 270:11 176 [1] - 68:19 1778 [1] - 48:6 178 [1] - 75:9 17th [1] - 78:15 18 [5] - 4:9, 61:23, 65:11, 143:16, 167:4	180 [1] - 77:8 181 [1] - 75:9 18th [2] - 2:15, 92:6 19 [6] - 4:10, 69:10, 143:17, 181:18, 183:15 195 [2] - 5:8, 48:3 1983 [1] - 21:19 1990 [3] - 21:15, 22:20, 22:21 1998 [4] - 21:8, 46:17, 47:12, 47:18 19th [3] - 269:12, 269:13, 269:14 1st [1] - 172:14	2	2 [7] - 3:7, 5:3, 13:13, 13:14, 127:3, 258:1 20 [13] - 4:11, 93:20, 124:7, 124:10, 124:13, 124:16, 124:18, 124:20, 143:18, 144:17, 183:23, 252:3, 296:17 2000 [3] - 22:22, 121:1, 269:13 2001 [2] - 43:10, 47:12 2002 [9] - 43:21, 44:2, 58:1, 61:23, 65:11, 76:13, 78:16, 80:19, 169:3 2003 [2] - 80:20, 82:7 2005 [2] - 121:3, 121:7 2006 [5] - 49:5, 51:14, 51:23, 124:3, 124:6 2007 [1] - 118:7 2008 [1] - 52:1 2009 [1] - 165:11 201 [1] - 65:2 2010 [7] - 23:23, 89:5, 90:1, 90:16, 121:5, 121:7, 298:3 2011 [25] - 4:7, 92:6, 96:18, 97:11, 97:15, 143:14, 144:18, 144:20, 145:2, 145:7, 146:1, 146:3, 146:10, 146:16, 147:4, 147:14, 147:21, 149:23, 150:22, 151:4, 151:9, 152:14, 185:23, 298:1 2012 [74] - 4:4, 4:8, 4:21, 12:14, 49:9, 50:2, 51:4, 56:17, 63:21, 71:18, 72:10,	87:6, 99:3, 100:18, 108:4, 114:1, 114:11, 119:23, 120:13, 125:6, 125:20, 127:19, 128:18, 130:2, 130:3, 143:15, 146:22, 147:4, 149:16, 152:22, 152:23, 153:7, 153:10, 153:18, 154:8, 154:13, 154:20, 155:8, 155:19, 157:6, 157:13, 157:20, 158:16, 159:7, 159:17, 161:11, 161:20, 162:12, 162:17, 163:1, 165:23, 166:21, 168:16, 169:22, 191:9, 195:12, 199:2, 204:5, 208:9, 208:18, 213:7, 213:17, 214:4, 214:10, 214:16, 215:2, 215:7, 240:1, 251:2, 251:8, 266:19, 269:15, 270:11, 297:22 2013 [14] - 4:9, 4:10, 74:5, 143:16, 143:17, 166:21, 167:7, 167:12, 167:14, 170:20, 171:7, 171:19, 174:5, 181:19 2014 [7] - 4:11, 29:23, 143:18, 172:15, 178:1, 179:5, 184:1 2015 [13] - 4:12, 27:12, 27:13, 27:17, 27:22, 30:1, 143:19, 178:2, 179:2, 179:4, 185:3, 185:6, 185:9 2016 [9] - 4:13, 119:15, 143:20, 169:11, 185:5, 185:11, 185:15, 185:18, 188:19 2017 [3] - 1:14, 154:8, 300:19 203 [1] - 4:14 21 [5] - 4:12, 143:19, 148:7, 184:23, 185:2 211 [1] - 4:16 219 [1] - 4:17 22 [9] - 4:4, 4:13, 100:18, 143:20, 173:13, 173:14,	184:23, 185:4, 188:21 23 [4] - 4:14, 203:11, 203:15, 212:5 2300 [1] - 184:18 2337.92 [1] - 184:18 24 [23] - 4:16, 9:4, 9:19, 10:2, 10:5, 92:19, 108:4, 191:9, 211:19, 212:1, 215:7, 217:10, 223:17, 233:3, 234:19, 240:17, 264:21, 266:10, 277:2, 277:6, 277:10, 288:4 24th [2] - 29:23, 125:6 25 [11] - 4:17, 40:10, 41:2, 126:14, 219:12, 223:18, 223:19, 223:23, 241:1, 248:7, 257:1 251 [1] - 3:3 254 [1] - 4:19 26 [5] - 4:19, 254:10, 254:13, 256:4, 256:20 27 [3] - 4:20, 270:11, 270:16 270 [1] - 4:20
0	0 [1] - 115:23	2	2 [7] - 3:7, 5:3, 13:13, 13:14, 127:3, 258:1 20 [13] - 4:11, 93:20, 124:7, 124:10, 124:13, 124:16, 124:18, 124:20, 143:18, 144:17, 183:23, 252:3, 296:17 2000 [3] - 22:22, 121:1, 269:13 2001 [2] - 43:10, 47:12 2002 [9] - 43:21, 44:2, 58:1, 61:23, 65:11, 76:13, 78:16, 80:19, 169:3 2003 [2] - 80:20, 82:7 2005 [2] - 121:3, 121:7 2006 [5] - 49:5, 51:14, 51:23, 124:3, 124:6 2007 [1] - 118:7 2008 [1] - 52:1 2009 [1] - 165:11 201 [1] - 65:2 2010 [7] - 23:23, 89:5, 90:1, 90:16, 121:5, 121:7, 298:3 2011 [25] - 4:7, 92:6, 96:18, 97:11, 97:15, 143:14, 144:18, 144:20, 145:2, 145:7, 146:1, 146:3, 146:10, 146:16, 147:4, 147:14, 147:21, 149:23, 150:22, 151:4, 151:9, 152:14, 185:23, 298:1 2012 [74] - 4:4, 4:8, 4:21, 12:14, 49:9, 50:2, 51:4, 56:17, 63:21, 71:18, 72:10,	87:6, 99:3, 100:18, 108:4, 114:1, 114:11, 119:23, 120:13, 125:6, 125:20, 127:19, 128:18, 130:2, 130:3, 143:15, 146:22, 147:4, 149:16, 152:22, 152:23, 153:7, 153:10, 153:18, 154:8, 154:13, 154:20, 155:8, 155:19, 157:6, 157:13, 157:20, 158:16, 159:7, 159:17, 161:11, 161:20, 162:12, 162:17, 163:1, 165:23, 166:21, 168:16, 169:22, 191:9, 195:12, 199:2, 204:5, 208:9, 208:18, 213:7, 213:17, 214:4, 214:10, 214:16, 215:2, 215:7, 240:1, 251:2, 251:8, 266:19, 269:15, 270:11, 297:22 2013 [14] - 4:9, 4:10, 74:5, 143:16, 143:17, 166:21, 167:7, 167:12, 167:14, 170:20, 171:7, 171:19, 174:5, 181:19 2014 [7] - 4:11, 29:23, 143:18, 172:15, 178:1, 179:5, 184:1 2015 [13] - 4:12, 27:12, 27:13, 27:17, 27:22, 30:1, 143:19, 178:2, 179:2, 179:4, 185:3, 185:6, 185:9 2016 [9] - 4:13, 119:15, 143:20, 169:11, 185:5, 185:11, 185:15, 185:18, 188:19 2017 [3] - 1:14, 154:8, 300:19 203 [1] - 4:14 21 [5] - 4:12, 143:19, 148:7, 184:23, 185:2 211 [1] - 4:16 219 [1] - 4:17 22 [9] - 4:4, 4:13, 100:18, 143:20, 173:13, 173:14,	184:23, 185:4, 188:21 23 [4] - 4:14, 203:11, 203:15, 212:5 2300 [1] - 184:18 2337.92 [1] - 184:18 24 [23] - 4:16, 9:4, 9:19, 10:2, 10:5, 92:19, 108:4, 191:9, 211:19, 212:1, 215:7, 217:10, 223:17, 233:3, 234:19, 240:17, 264:21, 266:10, 277:2, 277:6, 277:10, 288:4 24th [2] - 29:23, 125:6 25 [11] - 4:17, 40:10, 41:2, 126:14, 219:12, 223:18, 223:19, 223:23, 241:1, 248:7, 257:1 251 [1] - 3:3 254 [1] - 4:19 26 [5] - 4:19, 254:10, 254:13, 256:4, 256:20 27 [3] - 4:20, 270:11, 270:16 270 [1] - 4:20	
1	1 [11] - 3:6, 5:2, 10:11, 11:1, 98:16, 148:12, 148:13, 148:15, 184:17, 184:18, 258:5 10 [24] - 3:21, 8:14, 46:1, 46:2, 53:2, 53:6, 63:10, 79:23, 80:4, 80:8, 80:9, 87:22, 88:1, 98:5, 115:23, 127:15, 143:2, 166:2, 187:20, 187:22, 187:23, 227:5, 279:3, 279:12 10/17/12 [1] - 126:20 10/17/22 [1] - 4:6 100 [2] - 4:3, 150:2 10022 [1] - 2:15 10063 [1] - 78:12 1040 [13] - 4:9, 4:11, 4:12, 4:13, 143:16, 143:18, 143:19, 143:20, 145:23, 152:4, 166:3, 166:8, 185:6 1065 [4] - 4:10, 143:17, 181:22, 182:2 109 [1] - 101:4 10:17 [1] - 1:14 10th [1] - 19:11 11 [11] - 3:23, 51:23,	82:21, 83:2, 83:3, 83:22, 85:11, 86:21, 215:10, 260:20, 260:22 112 [1] - 101:7 116 [1] - 4:5 117-179 [1] - 258:5 11th [4] - 130:2, 130:4, 199:21, 200:12 12 [12] - 4:2, 7:10, 7:14, 9:1, 9:21, 89:2, 91:15, 98:5, 191:6, 192:10, 227:6, 283:12 12's [1] - 91:17 12.75 [3] - 35:23, 36:6, 36:13 124 [1] - 101:8 125 [2] - 189:11, 189:18 126 [1] - 4:6 128 [1] - 290:10 129,254 [1] - 185:7 12th [1] - 130:3 13 [7] - 4:3, 100:18, 100:22, 100:23, 101:1, 101:2, 283:12 14 [8] - 1:13, 2:9, 4:5, 116:16, 116:20, 189:4, 189:5, 189:8 14202 [1] - 2:5 14203 [1] - 2:10 143 [7] - 4:7, 4:8, 4:9, 4:10, 4:11, 4:12, 4:13 14859 [1] - 5:8 15 [6] - 4:6, 15:10, 76:13, 126:20, 127:1, 134:10 15-cv-701-FPG [1] - 1:6 156,196 [1] - 185:12 15th [1] - 154:9 16 [8] - 4:7, 48:22, 143:14, 144:14, 144:15, 147:19, 147:20, 183:15 167 [1] - 80:12 16A [3] - 166:3, 166:4, 166:9 17 [10] - 4:8, 4:21, 41:4, 143:15, 152:20, 165:22, 166:3, 270:11 176 [1] - 68:19 1778 [1] - 48:6 178 [1] - 75:9 17th [1] - 78:15 18 [5] - 4:9, 61:23, 65:11, 143:16, 167:4	2	2 [7] - 3:7, 5:3, 13:13, 13:14, 127:3, 258:1 20 [13] - 4:11, 93:20, 124:7, 124:10, 124:13, 124:16, 124:18, 124:20, 143:18, 144:17, 183:23, 252:3, 296:17 2000 [3] - 22:22, 121:1, 269:13 2001 [2] - 43:10, 47:12 2002 [9] - 43:21, 44:2, 58:1, 61:23, 65:11, 76:13, 78:16, 80:19, 169:3 2003 [2] - 80:20, 82:7 2005 [2] - 121:3, 121:7 2006 [5] - 49:5, 51:14, 51:23, 124:3, 124:6 2007 [1] - 118:7 2008 [1] - 52:1 2009 [1] - 165:11 201 [1] - 65:2 2010 [7] - 23:23, 89:5, 90:1, 90:16, 121:5, 121:7, 298:3 2011 [25] - 4:7, 92:6, 96:18, 97:11, 97:15, 143:14, 144:18, 144:20, 145:2, 145:7, 146:1, 146:3, 146:10, 146:16, 147:4, 147:14, 147:21, 149:23, 150:22, 151:4, 151:9, 152:14, 185:23, 298:1 2012 [74] - 4:4, 4:8, 4:21, 12:14, 49:9, 50:2, 51:4, 56:17, 63:21, 71:18, 72:10,	87:6, 99:3, 100:18, 108:4, 114:1, 114:11, 119:23, 120:13, 125:6, 125:20, 127:19, 128:18, 130:2, 130:3, 143:15, 146:22, 147:4, 149:16, 152:22, 152:23, 153:7, 153:10, 153:18, 154:8, 154:13, 154:20, 155:8, 155:19, 157:6, 157:13, 157:20, 158:16, 159:7, 159:17, 161:11, 161:20, 162:12, 162:17, 163:1, 165:23, 166:21, 168:16, 169:22, 191:9, 195:12, 199:2, 204:5, 208:9, 208:18, 213:7, 213:17, 214:4, 214:10, 214:16, 215:2, 215:7, 240:1, 251:2, 251:8, 266:19, 269:15, 270:11, 297:22 2013 [14] - 4:9, 4:10, 74:5, 143:16, 143:17, 166:21, 167:7, 167:12, 167:14, 170:20, 171:7, 171:19, 174:5, 181:19 2014 [7] - 4:11, 29:23, 143:18, 172:15, 178:1, 179:5, 184:1 2015 [13] - 4:12, 27:12, 27:13, 27:17, 27:22, 30:1, 143:19, 178:2, 179:2, 179:4, 185:3, 185:6, 185:9 2016 [9] - 4:13, 119:15, 143:20, 169:11, 185:5, 185:11, 185:15, 185:18, 188:19 2017 [3] - 1:14, 154:8, 300:19 203 [1] - 4:14 21 [5] - 4:12, 143:19, 148:7, 184:23, 185:2 211 [1] - 4:16 219 [1] - 4:17 22 [9] - 4:4, 4:13, 100:18, 143:20, 173:13, 173:14,	184:23, 185:4, 188:21 23 [4] - 4:14, 203:11, 203:15, 212:5 2300 [1] - 184:18 2337.92 [1] - 184:18 24 [23] - 4:16, 9:4, 9:19, 10:2, 10:5, 92:19, 108:4, 191:9, 211:19, 212:1, 215:7, 217:10, 223:17, 233:3, 234:19, 240:17, 264:21, 266:10, 277:2, 277:6, 277:10, 288:4 24th [2] - 29:23, 125:6 25 [11] - 4:17, 40:10, 41:2, 126:14, 219:12, 223:18, 223:19, 223:23, 241:1, 248:7, 257:1 251 [1] - 3:3 254 [1] - 4:19 26 [5] - 4:19, 254:10, 254:13, 256:4, 256:20 27 [3] - 4:20, 270:11, 270:16 270 [1] - 4:20
0	0 [1] - 115:23	2	2 [7] - 3:7, 5:3, 13:13, 13:14, 127:3, 258:1 20 [13] - 4:11, 93:20, 124:7, 124:10, 124:13, 124:16, 124:18, 124:20, 143:18, 144:17, 183:23, 252:3, 296:17 2000 [3] - 22:22, 121:1, 269:13 2001 [2] - 43:10, 47:12 2002 [9] - 43:21, 44:2, 58:1, 61:23, 65:11, 76:13, 78:16, 80:19, 169:3 2003 [2] - 80:20, 82:7 2005 [2] - 121:3, 121:7 2006 [5] - 49:5, 51:14, 51:23, 124:3, 124:6 2007 [1] - 118:7 2008 [1] - 52:1 2009 [1] - 165:11 201 [1] - 65:2 2010 [7] - 23:23, 89:5, 90:1, 90:16, 121:5, 121:7, 298:3 2011 [25] - 4:7, 92:6, 96:18, 97:11, 97:15, 143:14, 144:18, 144:20, 145:2, 145:7, 146:1, 146:3, 146:10, 146:16, 147:4, 147:14, 147:21, 149:23, 150:22, 151:4, 151:9, 152:14, 185:23, 298:1 2012 [74] - 4:4, 4:8, 4:21, 12:14, 49:9, 50:2, 51:4, 56:17, 63:21, 71:18, 72:10,	87:6, 99:3, 100:18, 108:4, 114:1, 114:11, 119:23, 120:13, 125:6, 125:20, 127:19, 128:18, 130:2, 130:3, 143:15, 146:22, 147:4, 149:16, 152:22, 152:23, 153:7, 153:10, 153:18, 154:8, 154:13, 154:20, 155:8, 155:19, 157:6, 157:13, 157:20, 158:16, 159:7, 159:17, 161:11, 161:20, 162:12, 162:17, 163:1, 165:23, 166:21, 168:16, 169:22, 191:9, 195:12, 199:2, 204:5, 208:9, 208:18, 213:7, 213:17, 214:4, 214:10, 214:16, 215:2, 215:7, 240:1, 251:2, 251:8, 266:19,		

39 [1] - 217:10 390 [1] - 257:21 399 [1] - 257:21 4 4 [3] - 3:10, 53:12, 53:16 4/17/03 [2] - 3:22, 80:4 4/29/65 [1] - 21:2 40 [1] - 218:14 401(k) [1] - 37:14 401(k)s [1] - 36:20 41 [1] - 206:20 42 [3] - 206:15, 206:21, 218:8 422-5971 [1] - 34:22 46 [1] - 180:15 469 [2] - 83:5, 85:18 470 [2] - 83:6, 86:22 49 [1] - 257:13 4th [4] - 27:12, 27:13, 27:16, 27:22 5 5 [25] - 3:2, 3:6, 3:7, 3:8, 3:11, 57:6, 58:2, 61:10, 61:18, 61:19, 65:12, 249:20, 249:21, 252:5, 256:19, 257:2, 257:3, 276:20, 278:17, 278:21, 279:2, 279:4, 290:2, 296:17 5,000 [3] - 188:13, 188:14, 188:15 5.99 [2] - 215:13, 215:15 5/13/02 [3] - 3:18, 68:13, 69:8 5/17/02 [2] - 3:20, 72:19 5/325s [1] - 9:7 50 [3] - 40:6, 40:8, 40:9 50/50 [1] - 168:1 53 [1] - 3:10 55 [2] - 35:9, 36:6 55.5 [1] - 35:18 55.75 [1] - 35:9 551 [1] - 117:1 552 [1] - 117:1 57 [1] - 3:11 5:21 [1] - 299:5 5:30 [2] - 290:1, 290:7	6 6 [8] - 3:13, 61:4, 61:9, 61:11, 61:12, 64:6, 65:12, 200:17 60 [1] - 76:13 607 [1] - 54:13 609 [1] - 34:22 61 [1] - 3:13 622 [1] - 48:10 64 [1] - 3:15 646 [1] - 2:16 663-1860 [1] - 2:16 68 [1] - 3:17 7 7 [14] - 3:15, 64:14, 64:17, 64:23, 116:3, 119:23, 120:13, 152:4, 182:4, 184:14, 184:15, 185:5, 185:11 70 [3] - 2:4, 169:23, 170:2 71,185 [1] - 166:5 716 [2] - 2:5, 2:10 72 [1] - 3:19 74,185 [1] - 166:18 8 8 [6] - 3:17, 58:9, 68:12, 68:16, 68:18, 149:19 8/18/11 [2] - 4:2, 89:2 80 [1] - 3:21 805 [1] - 2:14 82 [1] - 3:23 85 [1] - 48:10 855-2800 [1] - 2:10 8636 [2] - 22:14 869-2705 [1] - 17:13 870 [1] - 17:13 8879 [4] - 4:7, 4:8, 143:14, 143:15 89 [1] - 4:2 8th [2] - 1:14, 300:19 9 9 [8] - 3:19, 53:19, 72:18, 75:2, 75:3, 76:9, 78:5, 116:4 930 [2] - 1:13, 2:9 943 [1] - 255:9 972 [1] - 255:18 9th [8] - 19:3, 19:7, 19:9, 19:10, 19:14, 199:2, 199:5, 199:13	A a.m [1] - 1:15 ability [1] - 236:16 able [6] - 41:21, 140:7, 144:17, 151:9, 167:1, 244:1 abuse [3] - 77:13, 77:15, 140:8 acceptable [1] - 7:5 acceptance [1] - 65:20 access [2] - 151:2, 151:10 accident [41] - 55:5, 55:9, 56:16, 99:4, 99:6, 100:4, 101:16, 101:23, 102:3, 102:6, 102:14, 102:17, 102:21, 103:3, 103:13, 103:16, 104:1, 105:3, 107:10, 107:15, 108:1, 108:3, 108:14, 109:11, 109:13, 111:15, 112:2, 113:13, 113:14, 113:15, 115:7, 115:11, 117:13, 117:15, 125:5, 161:14, 162:2, 191:9, 191:19, 191:20 accidents [4] - 39:17, 55:3, 56:3, 100:7 according [2] - 161:4, 219:1 account [14] - 23:15, 23:19, 23:22, 24:8, 24:10, 24:17, 24:21, 166:20, 186:22, 187:3, 187:6, 187:9, 187:12, 189:16 accounts [1] - 215:1 accurate [2] - 57:19, 150:4 Acknowledge [1] - 65:5 acknowledge [4] - 69:6, 254:2, 257:5, 257:12 Acknowledgement [6] - 3:15, 3:17, 3:21, 64:14, 68:12, 80:4 acknowledgement [1] - 78:22 acknowledges [1] - 65:21 acknowledging [3] - 78:18, 80:22, 81:21	acknowledgment [2] - 67:9, 69:2 acronym [3] - 55:10, 235:5, 295:20 Action [6] - 1:6, 4:2, 4:6, 89:2, 91:22, 126:20 action [7] - 62:20, 63:6, 79:17, 82:15, 127:6, 190:10, 300:15 actions [1] - 127:13 actual [3] - 17:7, 192:5, 212:3 acupuncture [4] - 165:5, 165:7, 165:9, 165:15 ad [5] - 206:14, 206:15, 248:11, 263:15, 263:21 add [1] - 168:23 added [2] - 168:19, 243:15 addition [1] - 211:4 additional [2] - 244:22, 246:13 address [9] - 16:17, 17:1, 17:8, 47:21, 50:11, 50:12, 51:2, 184:10 adjourned [1] - 299:5 administered [6] - 32:14, 71:17, 133:13, 198:4, 202:4, 226:11 Administration [1] - 257:18 admitted [1] - 110:2 ads [1] - 219:4 advertised [3] - 248:8, 248:10, 248:14 advertisements [1] - 263:1 advice [2] - 12:23, 164:15 advised [1] - 14:15 affect [1] - 10:5 affected [1] - 123:5 affiliated [1] - 29:11 affirm [1] - 258:16 affixed [2] - 224:18, 300:18 affording [1] - 115:17 afraid [1] - 247:20 afternoon [1] - 251:23 afterwards [1] - 249:7 agenda [2] - 76:8, 76:11 ago [8] - 14:2, 24:13, 29:13, 51:23, 61:1, 126:14, 194:23, 290:19 agree [6] - 79:8, 203:19, 212:2, 217:12, 217:17, 223:22 agreed [2] - 20:11, 230:22 ahead [1] - 155:3 Aid [1] - 163:17 aircraft [1] - 287:10 aircrafts [1] - 287:12 airplane [1] - 293:7 alcohol [14] - 9:21, 67:10, 67:11, 76:14, 76:19, 77:3, 78:21, 79:13, 84:14, 86:12, 87:2, 87:7, 87:10, 258:10 Alcohol [7] - 4:1, 4:19, 82:21, 83:10, 83:16, 254:13, 260:16 Alien [1] - 250:22 alive [4] - 15:19, 16:7, 16:13, 21:21 allegation [2] - 191:11, 192:8 alleges [1] - 191:8 alleviate [1] - 118:13 allow [1] - 24:5 allowed [4] - 25:7, 115:1, 149:4, 280:16 allowing [2] - 114:9, 175:3 almost [6] - 169:23, 170:2, 177:17, 209:12, 243:8, 243:9 alone [1] - 135:5 ALSO [1] - 2:17 altering [1] - 86:6 Amended [2] - 3:6, 5:2 America [5] - 149:21, 287:12, 287:15, 292:10, 292:15 amount [7] - 94:11, 153:12, 182:5, 184:13, 185:6, 189:13, 241:22 analysis [1] - 261:8 AND [2] - 1:7, 2:11 annuities [1] - 166:13 answer [19] - 6:6, 6:18, 7:4, 26:8, 30:13, 42:9, 106:2, 194:22, 220:6, 253:5, 267:16, 267:17, 270:2, 276:3, 286:19, 294:5, 294:14, 294:17, 296:10
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<p>answering [2] - 6:22, 7:1</p> <p>answers [3] - 45:5, 97:21, 144:3</p> <p>anti [3] - 191:10, 191:13, 192:11</p> <p>anti-inflammatory [3] - 191:10, 191:13, 192:11</p> <p>anyway [2] - 197:14, 300:16</p> <p>anyways [1] - 148:20</p> <p>app [3] - 28:11, 90:9, 90:11</p> <p>appear [3] - 58:11, 65:8, 223:20</p> <p>APPEARING [3] - 2:2, 2:6, 2:11</p> <p>Applicant [1] - 44:20</p> <p>application [26] - 28:4, 28:10, 28:15, 28:20, 39:21, 41:22, 44:14, 45:1, 45:6, 45:10, 45:18, 57:1, 57:23, 74:6, 74:9, 74:13, 74:20, 90:5, 90:13, 90:22, 91:11, 93:23, 96:14, 97:14, 179:8, 179:11</p> <p>Application [3] - 3:8, 5:4, 44:11</p> <p>applications [3] - 57:23, 90:2, 90:3</p> <p>applied [9] - 29:1, 39:16, 40:4, 41:8, 41:13, 42:3, 56:13, 60:14, 89:6</p> <p>apply [7] - 32:8, 42:10, 66:14, 73:23, 97:10, 176:4, 280:11</p> <p>appointment [2] - 290:1, 290:9</p> <p>approval [3] - 161:8, 161:9, 161:10</p> <p>April [1] - 30:1</p> <p>area [5] - 23:1, 109:4, 124:3, 151:17, 162:1</p> <p>argument [1] - 102:22</p> <p>Arizona [1] - 184:10</p> <p>Arkansas [1] - 16:16</p> <p>arm's [1] - 169:16</p> <p>arrested [2] - 20:2, 20:5</p> <p>arrived [4] - 131:16, 134:6, 227:8, 229:21</p> <p>Article [2] - 4:15, 203:11</p> <p>article [34] - 26:1, 26:2, 203:18, 217:14, 217:19,</p>	<p>217:21, 217:23, 218:5, 218:11, 218:15, 218:18, 218:21, 219:2, 235:10, 235:14, 235:20, 235:22, 236:2, 236:6, 236:10, 267:11, 267:12, 268:11, 268:13, 268:16, 271:22, 273:11, 273:13, 274:13, 274:14, 274:15, 274:19, 276:23, 277:10</p> <p>articles [24] - 215:18, 215:22, 215:23, 217:6, 218:2, 268:19, 272:1, 272:14, 272:16, 273:8, 274:5, 275:12, 275:17, 275:18, 275:19, 275:20, 275:23, 276:8, 276:18, 276:19, 277:2, 277:15, 288:8, 288:23</p> <p>artist [1] - 23:7</p> <p>as-needed [2] - 194:1, 194:8</p> <p>Ashcroft [1] - 1:12</p> <p>ASHCROFT [2] - 300:5, 300:22</p> <p>Ashworth [4] - 147:10, 147:11, 147:12</p> <p>aside [2] - 145:16, 154:5</p> <p>assigned [1] - 73:9</p> <p>assignment [1] - 158:18</p> <p>assignments [2] - 158:21, 158:22</p> <p>assist [1] - 145:2</p> <p>associated [7] - 29:11, 29:13, 170:15, 237:1, 237:5, 237:8, 241:14</p> <p>assume [3] - 188:11, 188:12, 285:17</p> <p>assumed [1] - 198:5</p> <p>assuming [1] - 69:17</p> <p>ate [1] - 125:23</p> <p>attached [2] - 136:7, 226:20</p> <p>attended [1] - 75:15</p> <p>attention [6] - 54:17, 86:20, 148:4, 165:23, 190:7, 207:9</p> <p>attorney [10] - 5:15,</p>	<p>11:12, 144:3, 144:6, 222:4, 222:12, 222:19, 236:21, 246:22, 252:1</p> <p>attorney-client [2] - 222:4, 236:21</p> <p>attorneys [2] - 14:12, 14:15</p> <p>audited [1] - 186:3</p> <p>Augie [5] - 29:8, 29:10, 29:11, 29:15, 29:17</p> <p>AUGIE [1] - 29:10</p> <p>August [7] - 92:6, 156:4, 161:12, 162:12, 171:6, 171:19, 172:13</p> <p>authority [1] - 186:5</p> <p>authorized [1] - 84:8</p> <p>auto [4] - 20:8, 20:10, 31:4, 35:13</p> <p>available [1] - 290:7</p> <p>Avenel [2] - 72:23, 73:10</p> <p>AVENEL [1] - 73:1</p> <p>Avenue [1] - 2:14</p> <p>average [1] - 88:2</p> <p>award [2] - 104:7, 104:23</p> <p>aware [5] - 112:14, 117:23, 123:18, 162:5, 195:7</p> <p>awareness [3] - 76:14, 77:3, 126:5</p> <p>awfully [1] - 189:22</p>	<p>283:19, 284:3, 284:18, 285:5, 285:10, 295:23</p> <p>basis [4] - 193:18, 194:2, 194:6, 194:8</p> <p>batch [6] - 224:21, 224:22, 225:1, 225:9, 225:14, 225:23</p> <p>Bates [1] - 233:5</p> <p>bathroom [1] - 174:17</p> <p>beat [2] - 287:17, 292:11</p> <p>bedroom [1] - 146:19</p> <p>beforehand [1] - 236:15</p> <p>began [2] - 157:20, 227:16</p> <p>begin [3] - 6:18, 14:11, 155:23</p> <p>beginning [1] - 239:23</p> <p>begins [1] - 62:11</p> <p>behalf [1] - 251:14</p> <p>behind [2] - 242:6, 242:7</p> <p>bell [2] - 153:14, 184:11</p> <p>below [6] - 63:13, 67:19, 77:19, 82:8, 85:10, 226:8</p> <p>benefit [2] - 36:19, 39:4</p> <p>benefits [2] - 35:21, 291:22</p> <p>Benjamin [7] - 14:10, 14:13, 14:16, 221:7, 221:10, 222:8, 222:16</p> <p>Best [1] - 220:20</p> <p>best [2] - 45:7, 215:16</p> <p>better [2] - 164:17, 178:5</p> <p>Betty [4] - 16:1, 16:2, 16:3, 16:4</p> <p>between [20] - 32:6, 47:12, 96:23, 121:7, 157:9, 175:21, 176:5, 177:8, 178:22, 180:16, 180:17, 181:5, 221:7, 222:8, 253:4, 253:13, 253:16, 259:7, 284:14, 288:11</p> <p>big [5] - 52:12, 136:19, 189:9, 209:10, 278:21</p> <p>bill [1] - 150:13</p> <p>billboard [1] - 248:14</p> <p>Binghamton [5] -</p>	<p>51:9, 109:5, 111:20, 156:10, 164:4</p> <p>Binghamton's [1] - 164:7</p> <p>biological [4] - 16:9, 16:11, 19:12, 20:21</p> <p>birth [1] - 21:1</p> <p>bit [1] - 144:10</p> <p>blanket [3] - 67:16, 285:21, 294:13</p> <p>blanks [2] - 159:19, 179:17</p> <p>blood [8] - 122:3, 122:4, 124:13, 124:15, 124:17, 124:20, 125:2, 125:3</p> <p>board [1] - 147:16</p> <p>body [5] - 66:22, 107:21, 115:13, 115:17, 231:7</p> <p>bones [1] - 162:1</p> <p>bonus [6] - 37:2, 37:12, 95:6, 95:9, 95:11, 95:15</p> <p>bonuses [1] - 37:5</p> <p>Book [1] - 66:7</p> <p>book [1] - 66:10</p> <p>books [1] - 213:3</p> <p>bookstore [10] - 204:10, 204:20, 210:6, 212:11, 212:18, 212:19, 212:21, 212:22, 216:6, 216:9</p> <p>born [1] - 21:3</p> <p>BORON [69] - 2:8, 5:12, 8:3, 10:14, 10:18, 10:23, 13:7, 13:11, 17:9, 33:15, 34:1, 34:6, 43:14, 43:18, 43:23, 53:14, 57:11, 61:7, 64:16, 68:15, 72:21, 80:6, 83:1, 89:4, 98:4, 98:6, 98:11, 98:15, 98:18, 99:1, 100:20, 116:18, 126:22, 143:22, 166:7, 166:10, 190:2, 190:6, 190:16, 190:19, 191:4, 194:23, 195:6, 203:13, 205:11, 205:17, 205:22, 210:22, 211:3, 211:12, 211:21, 219:14, 221:23, 222:3, 222:5, 222:7, 222:14, 223:14, 223:16, 233:6,</p>
--	---	--	--	---

B

background [1] - 14:23

bad [1] - 219:19

badge [1] - 225:7

Baldwin [2] - 19:16, 19:22

bank [7] - 186:21, 214:12, 214:14, 214:15, 214:16, 215:1

Bank [2] - 149:20, 214:18

banking [1] - 214:16

banks [1] - 215:1

barely [1] - 45:3

Barnes [3] - 204:10, 204:19, 204:21

base [1] - 73:7

based [13] - 13:5, 35:10, 265:5, 265:10, 266:6, 266:13, 266:15,

249:21, 250:1,
250:8, 254:20,
257:2, 279:21,
280:3, 288:3, 299:2
boron [2] - 210:19,
280:11
Boron [2] - 3:2, 5:14
boss [1] - 96:20
BOTANICALS [2] -
1:8, 2:12
Botanicals [2] - 275:7,
276:13
bother [2] - 162:9,
282:4
bothered [1] - 162:10
bothering [1] - 162:13
bottle [15] - 12:16,
12:18, 12:21, 219:7,
229:3, 241:23,
243:6, 243:14,
243:15, 243:18,
244:1, 244:9,
244:20, 245:2, 245:9
bottles [1] - 244:22
bottom [21] - 53:18,
53:22, 58:8, 61:13,
61:16, 65:1, 68:19,
69:5, 75:7, 80:11,
83:4, 86:21, 91:18,
116:23, 117:18,
127:2, 127:11,
215:6, 241:1, 255:9,
255:11
bought [21] - 74:16,
114:7, 116:12,
168:22, 182:19,
182:20, 183:18,
204:22, 204:23,
208:13, 208:18,
208:19, 208:21,
208:22, 209:1,
209:3, 236:3, 236:4,
239:13, 240:15,
288:12
BOWDEN [1] - 16:19
box [24] - 78:13, 92:1,
92:9, 127:8, 184:16,
184:17, 184:18,
189:4, 189:5,
189:11, 219:16,
219:18, 220:8,
220:9, 220:12,
220:15, 229:9,
229:13, 229:16,
229:18, 229:21,
245:15, 245:16
boxes [1] - 220:23
break [18] - 27:19,
33:16, 33:23, 57:12,
57:17, 97:23, 98:2,

98:8, 143:8, 144:1,
189:20, 211:13,
211:22, 212:10,
250:2, 250:9, 280:20
breaks [2] - 33:19,
280:16
breast [2] - 208:5,
208:6
breath [1] - 42:8
briefly [3] - 145:5,
170:23, 171:2
bring [13] - 12:11,
30:5, 128:17,
210:14, 212:19,
219:7, 220:8, 228:5,
228:13, 232:4,
232:7, 245:2, 252:7
broadcast [1] - 239:19
broken [1] - 162:1
Brothers [2] - 171:14,
172:23
brought [5] - 129:1,
219:15, 228:8,
228:15, 229:12
bruised [1] - 161:22
Buffalo [3] - 1:14, 2:5,
2:10
build [1] - 247:11
building [3] - 138:21,
138:22, 139:4
Building [2] - 1:13, 2:9
burn [3] - 125:7,
155:12, 156:13
burnt [4] - 156:6,
156:19, 156:21,
157:8
business [10] -
150:10, 167:14,
167:16, 167:23,
168:3, 168:9,
168:13, 172:12,
183:18, 295:23
button [1] - 179:18
buy [12] - 169:22,
187:16, 206:11,
206:13, 206:17,
206:21, 216:2,
219:4, 263:7,
269:21, 269:23,
270:3
buying [1] - 201:23
buys [1] - 270:3
BY [43] - 2:3, 2:8, 2:13,
5:12, 8:3, 10:23,
13:11, 17:9, 34:6,
43:23, 53:14, 57:11,
61:7, 64:16, 68:15,
72:21, 80:6, 83:1,
89:4, 99:1, 100:20,
116:18, 126:22,

143:22, 166:10,
190:6, 191:4, 195:6,
203:13, 205:22,
211:21, 219:14,
222:14, 223:16,
250:8, 251:21,
254:15, 254:23,
270:13, 280:8,
286:13, 290:18,
295:2

C

C-H-A-V-E-Z [1] - 15:5
C-H-O-I [1] - 8:9
calendar [1] - 130:5
California [14] - 15:22,
18:20, 20:2, 20:5,
20:15, 21:7, 46:7,
46:15, 47:2, 47:14,
47:16, 47:18,
207:20, 247:18
camera [1] - 220:18
cameras [2] - 220:4,
220:7
campus [1] - 164:7
cancer [8] - 207:4,
207:14, 208:2,
208:4, 208:5, 208:7,
208:12, 210:3
candy [1] - 22:1
Candy [1] - 22:5
candy's [1] - 22:15
cannabinoid [3] -
235:6, 265:17,
266:15
cannabinoid-based
[1] - 266:15
cannabinoids [6] -
234:20, 235:1,
235:8, 262:15,
262:20, 267:22
Cannabis [1] - 262:7
cannabis [3] - 235:2,
262:10, 266:15
cap [1] - 229:2
car [3] - 99:16, 232:2,
267:4
Carbonics [1] - 40:15
card [9] - 205:9,
205:12, 205:13,
205:19, 213:5,
213:16, 214:2,
214:11, 270:4
cards [4] - 213:7,
213:9, 214:6, 214:7
care [11] - 8:10, 8:12,
8:20, 108:17, 112:1,
121:16, 150:3,
158:9, 162:16,

281:10, 281:11
career [1] - 104:12
carefully [1] - 265:13
Carrier [2] - 26:15,
66:7
case [6] - 43:2, 63:1,
221:1, 247:2,
247:11, 258:13
cash [1] - 205:8
caught [1] - 207:8
caused [3] - 62:19,
63:6, 105:2
CBD [8] - 234:22,
235:5, 263:13,
263:22, 267:13,
268:4, 268:10,
268:15
CBD-type [1] - 268:4
Celadon [1] - 40:14
cell [14] - 16:21, 16:23,
150:11, 150:13,
150:15, 150:16,
150:19, 151:15,
151:19, 180:19,
180:22, 181:2,
290:11
cellophane [1] -
229:11
cells [1] - 235:13
Center [3] - 48:6, 48:8,
49:16
cents [2] - 35:9,
180:15
certain [6] - 100:7,
134:20, 148:5,
165:14, 174:18,
259:1
certainly [1] - 98:7
certification [2] - 64:5,
122:12
certifications [1] -
106:14
certified [2] - 45:5,
47:9
certify [3] - 300:6,
300:12, 300:15
certifying [3] - 59:4,
77:11, 77:14
cetera [1] - 57:18
CFR [1] - 258:4
change [6] - 63:9,
78:11, 157:16,
183:17, 214:22,
231:7
changed [7] - 15:12,
19:18, 19:19, 24:3,
78:14, 214:7, 249:8
changing [1] - 144:9
Chapter [1] - 258:5
charged [1] - 20:4

charges [1] - 20:10
charging [1] - 147:16
Charles [2] - 99:23,
199:19
Chavez [10] - 15:5,
15:7, 15:14, 15:16,
16:1, 16:2, 16:9,
19:4, 19:5, 19:20
check [1] - 193:23
checked [2] - 92:2,
127:8
child [1] - 50:13
children [1] - 50:15
CHOI [1] - 162:22
Choi [39] - 8:5, 8:6,
8:10, 8:20, 9:16,
111:19, 111:22,
112:2, 112:6,
112:14, 112:16,
113:2, 113:16,
114:14, 115:6,
115:10, 115:18,
115:22, 116:6,
116:11, 121:13,
121:16, 121:20,
122:7, 162:20,
163:1, 163:6,
164:10, 164:15,
165:18, 192:1,
193:23, 195:7,
196:8, 196:19,
197:10, 198:3,
222:23, 237:15
Choi's [4] - 163:20,
164:6, 201:7, 201:11
choices [1] - 164:3
Christ [1] - 55:13
Christmas [1] - 37:12
Christmastime [1] -
118:12
chronic [1] - 126:13
Cincinnati [3] - 75:17,
76:2, 76:6
Cindy [71] - 2:17,
10:20, 21:9, 32:7,
32:22, 37:21, 47:4,
49:23, 52:6, 52:10,
52:17, 52:19, 75:20,
90:13, 97:7, 97:14,
100:1, 104:22,
107:1, 107:2,
107:18, 122:21,
126:5, 129:15,
129:18, 130:17,
138:7, 138:13,
142:16, 143:4,
147:1, 150:3, 150:5,
152:9, 154:16,
157:12, 159:3,
166:22, 167:2,

167:20, 168:11,
173:20, 176:16,
177:21, 185:8,
198:20, 199:4,
200:18, 202:7,
204:22, 212:13,
217:6, 218:23,
227:13, 227:14,
227:15, 227:17,
227:18, 230:21,
230:22, 231:9,
240:8, 244:12,
269:7, 269:10,
269:21, 270:7,
272:19, 272:20,
284:8, 291:2
CINDY [1] - 1:4
Cindy's [11] - 202:11,
207:3, 207:14,
207:18, 207:21,
208:1, 208:6,
208:11, 210:1,
216:15, 216:18
cinnamon [1] - 243:21
circumstances [2] -
25:20, 172:3
cirrhosis [1] - 123:9
cities [1] - 164:3
Cities [1] - 109:4
city [1] - 209:11
Civil [1] - 1:6
claimed [1] - 55:4
class [2] - 76:2, 107:3
classified [1] - 55:8
CLAUDE [1] - 2:13
clean [2] - 133:15,
133:16
cleaned [1] - 251:6
clear [5] - 14:20,
103:8, 210:18,
211:9, 298:20
cleared [1] - 155:2
client [6] - 25:14,
210:19, 211:9,
222:4, 236:21,
294:16
clients [2] - 11:17,
33:22
close [1] - 222:2
clothing [1] - 38:12
cocaine [1] - 260:3
code [2] - 149:10,
257:13
codes [1] - 66:8
coffee [2] - 33:19,
266:23
cold [3] - 164:20,
164:21, 165:17
college [4] - 147:4,
147:6, 147:8, 147:9

College [1] - 147:12
Colorado [1] - 50:22
colored [1] - 219:12
column [1] - 85:17
com [1] - 272:7
coming [5] - 99:19,
99:22, 235:2, 272:8,
274:8
commenced [3] -
221:8, 221:11,
221:14
commencement [1] -
300:8
commentary [2] -
77:5, 106:1
commented [2] - 25:4,
25:6
comments [1] -
127:12
committee [4] - 102:2,
102:5, 102:9, 103:17
communicate [1] -
151:23
communication [1] -
96:23
Comp [11] - 4:5,
110:12, 110:20,
112:4, 116:16,
158:6, 158:10,
158:11, 158:12,
158:14, 193:8
companies [5] -
26:20, 40:18, 55:23,
97:12, 97:15
Company [17] - 3:11,
3:17, 3:23, 4:19,
57:6, 58:5, 58:22,
68:12, 68:23, 69:7,
72:18, 75:13, 79:14,
82:21, 83:16,
254:13, 255:5
company [37] - 26:21,
26:22, 27:23, 29:2,
29:14, 29:18, 29:20,
38:7, 41:17, 41:18,
52:20, 63:9, 82:16,
83:9, 86:15, 89:7,
90:2, 92:19, 92:22,
106:11, 113:7,
127:14, 151:23,
171:4, 173:14,
177:4, 179:18,
180:2, 180:5, 180:9,
200:16, 272:3,
274:7, 274:9,
274:17, 278:3, 296:7
compensate [2] -
160:17, 160:20
compensated [2] -
35:4, 36:17

Compensation [3] -
153:20, 153:23,
154:5
compensation [6] -
34:23, 35:2, 94:3,
94:7, 179:21, 182:14
compiled [1] - 270:14
complaint [9] - 13:15,
13:17, 13:22, 14:1,
190:10, 190:13,
191:5, 191:8, 192:10
Complaint [2] - 3:7,
5:3
complete [1] - 45:7
completely [2] -
155:2, 245:17
compliance [3] -
79:12, 87:8, 87:10
compliance/
designated [1] - 87:3
comply [3] - 58:21,
281:21, 282:20
component [2] - 77:2,
151:4
composite [1] -
270:17
compresses [3] -
164:20, 164:21,
165:17
computer [7] - 250:12,
250:15, 250:17,
250:19, 273:1,
279:21, 279:23
computers [1] -
250:23
concern [3] - 13:4,
209:22, 234:12
concerned [3] - 13:1,
113:5, 143:4
concerns [1] - 13:6
concrete [1] - 52:13
condition [2] - 79:15,
207:22
conference [1] - 130:6
confirm [2] - 94:20,
270:21
confirmation [2] -
141:4, 141:5
confusing [1] - 295:11
connection [1] -
258:11
consecutively [1] -
101:5
consent [1] - 45:9
considered [2] - 71:5,
103:17
consist [1] - 66:2
consistent [1] - 84:9
consists [3] - 83:3,
101:2, 223:19

construction [1] -
161:7
consult [3] - 63:19,
63:23, 116:11
consume [2] - 7:14,
9:21
consumed [1] - 7:8
consumer [1] - 234:8
consuming [1] - 247:6
consumption [3] -
237:2, 237:8, 241:15
contact [8] - 68:4,
85:1, 86:23, 96:3,
140:18, 141:15,
196:19, 196:22
contacted [9] - 96:6,
133:4, 139:11,
139:13, 140:5,
141:8, 141:18,
176:1, 247:17
contain [3] - 284:19,
285:6, 291:9
contained [3] - 282:6,
283:21, 284:4
container [8] - 134:13,
136:6, 136:18,
136:22, 137:7,
137:13, 137:16,
142:4
containers [7] -
136:19, 136:23,
137:10, 137:14,
137:22, 137:23,
138:4
contains [3] - 55:21,
261:7, 270:18
contemporaneously
[1] - 283:7
Continental [1] -
40:14
continuation [1] -
236:22
continue [8] - 74:15,
144:1, 154:3,
211:23, 250:10,
290:14, 296:17,
296:18
continues [2] - 57:16,
234:7
continuing [2] - 195:8,
290:5
continuous [2] -
27:19, 53:3
continuously [1] -
155:18
contracted [1] -
122:19
controlled [8] -
258:10, 277:23,
278:6, 281:21,

282:1, 282:21,
285:17, 285:19
conversation [7] -
113:9, 113:16,
128:7, 128:10,
129:16, 130:11,
130:14
conversations [3] -
112:16, 128:1,
280:20
convicted [3] - 20:13,
20:17, 20:19
copies [9] - 10:21,
43:19, 98:1, 210:22,
219:19, 219:20,
223:6, 223:8, 223:9
copy [22] - 11:1,
13:15, 28:18, 28:20,
43:15, 53:19, 74:9,
79:6, 83:15, 100:23,
101:1, 102:13,
103:21, 127:6,
152:21, 179:10,
189:2, 211:10,
254:16, 254:19,
254:20, 291:5
Coraopolis [2] - 72:2,
130:19
corner [23] - 44:8,
44:13, 53:18, 58:8,
65:2, 68:19, 69:22,
70:1, 71:15, 75:7,
80:11, 83:5, 83:9,
85:11, 86:22, 91:18,
92:1, 117:1, 127:3,
127:7, 181:23,
182:1, 215:6
correct [349] - 32:10,
35:15, 36:15, 41:9,
41:10, 42:16, 44:8,
44:11, 46:20, 46:23,
58:6, 58:9, 60:3,
62:17, 62:18, 62:21,
62:22, 63:4, 63:18,
64:10, 64:11, 65:6,
65:7, 65:13, 66:1,
67:1, 68:20, 68:21,
68:23, 69:1, 69:3,
69:8, 69:9, 72:4,
73:15, 75:4, 75:6,
75:9, 75:10, 75:21,
76:10, 77:9, 77:10,
77:17, 78:6, 78:7,
79:2, 79:7, 79:19,
80:9, 80:10, 80:12,
80:20, 80:21, 82:11,
83:6, 83:7, 83:10,
83:11, 83:14, 84:2,
85:12, 85:16, 85:20,
85:23, 86:2, 86:19,

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

87:1, 89:12, 89:13,
89:14, 89:15, 92:9,
92:10, 93:15, 96:5,
99:18, 102:8,
103:13, 103:14,
106:3, 107:9,
107:13, 107:16,
108:5, 109:16,
109:22, 116:5,
116:21, 116:22,
117:2, 117:3,
117:15, 118:22,
119:3, 119:4, 119:5,
119:9, 119:16,
120:2, 122:6,
123:17, 124:11,
124:12, 127:5,
127:20, 127:21,
130:22, 134:16,
134:21, 135:8,
135:16, 135:17,
137:11, 137:15,
138:2, 139:16,
140:17, 141:2,
141:10, 147:22,
152:6, 152:13,
153:2, 153:3, 153:5,
153:6, 154:1, 154:2,
154:21, 155:5,
159:5, 160:12,
166:14, 166:17,
168:14, 169:13,
171:10, 172:10,
173:17, 174:4,
176:17, 178:21,
179:3, 185:10,
185:13, 185:15,
185:16, 185:19,
187:2, 189:10,
189:14, 191:12,
193:20, 193:21,
193:22, 198:23,
199:1, 199:14,
200:2, 202:6,
206:16, 207:10,
207:13, 210:4,
212:7, 212:12,
212:15, 212:16,
214:1, 214:3,
214:19, 215:8,
215:9, 215:11,
215:14, 217:16,
217:20, 218:12,
218:16, 219:22,
220:1, 221:15,
224:1, 224:19,
225:13, 226:7,
226:13, 226:16,
227:3, 228:12,
229:6, 229:15,
229:17, 229:23,

230:3, 231:21,
233:12, 234:1,
234:11, 234:21,
234:23, 237:13,
237:14, 238:21,
240:2, 240:10,
242:1, 242:3, 243:7,
243:8, 244:10,
244:21, 245:3,
245:5, 245:8, 246:1,
247:10, 248:1,
248:3, 249:14,
252:3, 252:19,
252:20, 254:4,
254:7, 254:8,
255:19, 255:23,
256:1, 257:4, 257:6,
257:7, 257:11,
258:7, 258:18,
258:19, 258:21,
258:22, 259:3,
259:4, 259:12,
259:13, 259:17,
259:18, 259:21,
259:22, 260:1,
260:5, 261:7,
261:14, 261:23,
262:3, 262:6, 262:9,
263:17, 263:19,
263:20, 264:1,
264:9, 264:11,
264:12, 264:13,
264:22, 265:1,
267:8, 267:21,
269:9, 269:16,
271:1, 273:3, 273:6,
273:10, 273:19,
273:20, 273:23,
274:3, 274:4,
274:15, 274:19,
274:20, 274:23,
275:1, 275:2, 275:3,
275:5, 275:6, 275:8,
275:9, 275:11,
275:15, 275:16,
276:4, 276:5, 276:7,
276:8, 276:10,
276:15, 276:17,
276:18, 276:23,
277:1, 277:4,
277:11, 277:12,
277:16, 278:4,
279:14, 280:13,
280:14, 280:18,
280:21, 280:22,
281:2, 281:3, 281:8,
281:18, 281:19,
281:22, 281:23,
282:7, 282:8,
282:15, 282:22,
282:23, 283:13,

288:5, 288:9,
288:10, 288:13,
288:14, 288:17,
288:19, 289:22,
290:20, 290:23,
294:1, 294:3, 294:5,
294:11, 295:4,
296:1, 296:6,
296:22, 296:23,
300:13
correspondence [1] -
68:5
cost [1] - 245:6
Costco [1] - 163:17
counsel [5] - 211:11,
251:18, 252:6,
255:1, 300:15
Counsel [2] - 34:3,
290:10
count [3] - 40:6, 62:8,
144:17
counter [6] - 33:13,
84:1, 84:19, 85:8,
96:9, 193:10
countertop [3] -
224:12, 224:13,
229:20
country [1] - 31:1
County [5] - 18:17,
19:23, 20:1, 300:6
COUNTY [1] - 300:3
couple [19] - 5:22,
6:15, 24:13, 31:21,
42:22, 43:3, 61:1,
98:1, 119:19,
184:23, 215:4,
226:3, 227:11,
227:23, 228:3,
228:4, 260:11,
275:17, 275:19
course [2] - 52:6, 52:8
Court [2] - 252:4,
286:6
court [6] - 6:12, 13:8,
18:8, 239:12,
239:14, 294:20
COURT [1] - 1:1
cover [6] - 180:4,
203:17, 207:7,
215:7, 229:8, 262:7
coverage [2] - 151:8,
179:23
covered [1] - 52:23
CPA [5] - 145:7,
145:15, 149:2,
149:13, 150:7
CPAs [1] - 144:20
credit [11] - 182:19,
182:20, 205:8,
205:12, 205:13,

205:19, 213:4,
213:7, 213:8,
213:16, 270:4
crime [3] - 20:13,
20:17, 20:19
crude [4] - 89:10,
89:11, 90:12, 97:18
CSA [6] - 55:13, 56:9,
56:13, 57:2, 102:16
cup [5] - 134:19,
134:23, 135:6,
136:23, 138:19
cupboard [6] - 242:5,
242:6, 242:9,
242:10, 242:16,
248:5
current [1] - 26:11
custom [1] - 146:6
cut [1] - 241:2

D

D-A-C [1] - 55:18
DAC [6] - 55:2, 55:10,
55:16, 55:19, 56:7,
56:11
dad [4] - 19:12, 20:12,
20:21
daily [2] - 165:1, 165:2
DAK [1] - 55:16
Dakota [10] - 56:17,
107:10, 107:16,
108:4, 109:22,
109:23, 125:5,
170:22, 170:23,
171:3
Dallas [1] - 266:18
database [2] - 55:21,
56:2
date [33] - 21:1, 31:20,
34:13, 43:22, 44:13,
59:12, 61:15, 61:19,
61:21, 61:23, 65:11,
80:18, 81:4, 92:5,
119:21, 119:22,
120:5, 120:8, 120:9,
124:4, 165:13,
208:14, 236:9,
239:22, 255:20,
269:17, 271:14,
281:6, 281:14,
289:17, 291:9,
291:11
dated [34] - 3:12, 3:14,
3:16, 3:18, 3:20,
3:22, 4:2, 4:4, 4:6,
4:7, 4:8, 4:9, 4:10,
4:11, 4:12, 4:13,
4:21, 57:7, 61:5,
64:14, 68:13, 72:19,
80:4, 89:2, 100:18,
126:20, 143:14,
143:15, 143:16,
143:17, 143:18,
143:19, 143:20,
270:11
dates [1] - 284:12
daughter [9] - 50:4,
50:19, 51:15, 228:5,
228:8, 229:12,
244:13, 244:14,
246:15
daughters [4] - 50:17,
216:21, 216:23,
251:10
days [9] - 76:7,
127:15, 149:6,
175:5, 175:6, 198:9,
199:8, 199:21, 227:5
daytime [1] - 159:2
deal [5] - 52:14, 145:3,
156:22, 165:20,
169:18
dealer [2] - 170:7,
170:11
dealership [2] -
168:22, 170:6
dealing [2] - 118:18,
210:2
dealt [3] - 145:3,
156:23, 157:1
debit [1] - 214:11
December [1] - 35:20
decide [1] - 206:17
decided [2] - 92:18,
246:23
decision [4] - 102:5,
205:3, 246:21, 253:7
decompression [2] -
118:10, 118:12
deduction [3] - 150:9,
150:11, 151:5
deductions [2] -
147:20, 148:6
deducts [1] - 149:7
deep [1] - 42:8
deer [1] - 55:8
defects [1] - 105:2
DEFENDANT [2] - 2:6,
2:11
Defendants [1] - 1:9
defendants [2] - 5:16,
5:19
define [1] - 46:8
definite [1] - 228:2
definitely [1] - 100:14
degenerative [4] -
108:8, 117:21,
118:17, 119:6
Delaney [3] - 67:21,

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

<p>67:22, 68:5 delete [1] - 25:14 deleted [2] - 25:17, 26:5 deleting [1] - 25:20 delivered [2] - 75:14, 245:23 Delivered [2] - 3:20, 72:19 delivery [2] - 161:1, 231:20 Demand [2] - 3:7, 5:3 Demerol [1] - 110:7 denial [5] - 42:4, 42:11, 42:17, 42:18, 42:23 dental [1] - 39:7 Denver [1] - 50:22 deny [4] - 64:10, 82:12, 86:10, 118:15 Department [1] - 257:17 department [2] - 109:15, 109:19 dependant [1] - 146:13 depended [1] - 157:5 dependent [1] - 263:5 depicted [1] - 248:7 deposed [1] - 6:10 deposition [19] - 10:12, 11:19, 11:23, 13:14, 53:16, 61:9, 68:17, 75:2, 80:8, 83:2, 91:16, 100:22, 116:20, 127:1, 167:4, 181:18, 183:22, 203:15, 212:2 Deposition [3] - 10:17, 11:5, 299:5 depositions [1] - 57:13 depreciation [2] - 183:16, 183:17 describe [4] - 55:7, 66:20, 73:7, 137:4 described [5] - 58:16, 66:11, 119:2, 153:17, 274:16 describes [1] - 117:14 describing [1] - 240:21 Description [3] - 3:11, 57:6, 58:5 DESCRIPTION [1] - 3:5 description [2] - 58:14, 117:12 designated [2] - 87:8,</p>	<p>87:11 detail [1] - 82:14 determine [3] - 63:15, 160:16, 226:17 detour [1] - 161:7 deviate [1] - 161:5 device [1] - 159:6 diagnosed [11] - 108:8, 120:15, 121:9, 121:17, 122:23, 126:12, 161:19, 207:15, 207:16, 208:6, 208:12 Diagnostics [1] - 32:19 Dice [5] - 5:18, 272:2, 272:9, 275:2, 276:9 DICE [2] - 1:7, 2:7 dietary [5] - 239:8, 291:17, 293:1, 293:20, 293:21 difference [5] - 100:11, 253:15, 253:19, 256:8, 256:11 different [24] - 19:7, 40:18, 55:14, 55:15, 60:6, 89:7, 90:7, 90:10, 102:11, 119:1, 122:8, 135:22, 137:22, 138:17, 141:12, 141:13, 173:15, 174:11, 177:4, 211:1, 211:3, 250:14, 253:8, 256:9 difficult [2] - 33:18, 252:11 direct [3] - 148:4, 165:23, 252:5 directed [1] - 289:8 directing [1] - 86:20 direction [2] - 144:6, 226:14 director [3] - 101:12, 130:7, 130:13 dirty [28] - 41:19, 128:4, 128:23, 139:14, 140:6, 140:12, 140:13, 140:14, 141:15, 142:2, 198:18, 198:22, 199:8, 199:23, 200:15, 203:1, 203:2, 204:13, 204:16, 209:3, 209:5, 219:5, 225:12, 236:12,</p>	<p>259:23, 281:12 disabled [1] - 20:23 disagreement [3] - 174:20, 174:22, 175:1 disbelief [1] - 142:15 disc [5] - 108:8, 117:21, 118:17, 119:6, 119:7 discarded [1] - 137:18 discharge [2] - 62:21, 63:7 disciplinary [11] - 62:20, 63:6, 79:16, 81:1, 81:3, 81:14, 81:22, 81:23, 82:4, 82:13, 82:14 disclose [3] - 39:17, 39:22, 39:23 discover [1] - 213:13 Discover [3] - 213:14, 213:15, 214:2 discovered [2] - 281:5, 281:14 discs [4] - 117:22, 118:1, 118:6, 118:18 discuss [2] - 144:2, 195:19 discussed [2] - 194:15, 222:12 discussion [1] - 112:21 Discussion [1] - 190:4 disease [4] - 108:9, 117:22, 118:17, 119:6 dispatch [3] - 160:21, 160:22, 161:1 distance [1] - 164:5 distinction [4] - 253:3, 253:5, 253:13, 259:7 DISTRICT [2] - 1:1, 1:2 ditch [2] - 99:15, 99:16 division [3] - 89:10, 89:12, 256:10 Dixie [54] - 63:21, 87:6, 116:12, 206:14, 223:21, 225:7, 232:9, 232:11, 232:13, 232:16, 239:17, 244:23, 246:13, 246:18, 247:2, 247:12, 248:7, 249:10, 251:18, 252:2, 260:11, 263:15, 264:20, 268:2, 268:18, 268:19, 270:22,</p>	<p>271:8, 271:16, 272:9, 272:15, 273:7, 273:18, 274:2, 274:8, 274:21, 275:7, 276:1, 276:3, 276:13, 278:2, 278:3, 281:1, 281:17, 281:20, 282:11, 282:18, 286:1, 288:1, 288:8, 288:16, 289:2, 289:15, 291:15 DIXIE [4] - 1:7, 1:7, 2:11, 2:12 Dixie's [4] - 277:19, 277:20, 277:21, 285:4 DNA [1] - 235:13 doctor [29] - 85:1, 108:16, 108:17, 108:19, 109:1, 109:6, 109:8, 110:10, 110:12, 110:20, 111:13, 111:20, 112:4, 118:4, 120:19, 122:8, 122:17, 122:18, 123:4, 155:7, 158:4, 158:6, 158:11, 158:12, 158:14, 161:20, 193:9, 238:12 Doctor [2] - 4:5, 116:16 doctor's [3] - 110:15, 121:11, 156:7 doctors [1] - 155:2 document [26] - 3:14, 53:17, 54:2, 54:23, 56:23, 58:3, 58:4, 61:5, 62:2, 62:6, 62:9, 63:1, 68:18, 104:15, 117:4, 127:23, 136:7, 136:8, 136:9, 254:9, 255:2, 255:3, 256:3, 256:16, 270:17, 270:19 documents [5] - 11:22, 12:2, 12:7, 219:20, 221:2 Dodge [4] - 168:16, 169:3, 170:7, 182:16 dollar [3] - 182:5, 184:13, 189:13 dollars [1] - 94:11 done [38] - 41:16, 42:2, 42:9, 57:13, 70:5, 70:10, 71:12,</p>	<p>72:11, 72:12, 72:13, 90:23, 101:22, 104:10, 112:19, 122:7, 123:21, 124:13, 124:15, 124:17, 133:5, 134:4, 136:15, 136:17, 141:17, 142:5, 143:2, 143:3, 145:7, 156:11, 157:3, 157:6, 200:15, 200:22, 233:16, 233:20, 251:16, 290:13 door [3] - 190:15, 248:16 door-to-door [1] - 248:16 Dosage [1] - 233:10 dosage [8] - 9:3, 9:12, 84:8, 226:6, 226:11, 226:14, 230:11, 236:23 dose [5] - 227:7, 227:10, 230:6, 231:2, 231:4 DOT [43] - 3:23, 4:3, 76:14, 82:21, 83:9, 83:16, 85:14, 85:21, 86:4, 86:18, 100:5, 100:9, 100:13, 100:18, 102:14, 102:20, 103:3, 122:15, 139:17, 139:22, 140:2, 143:3, 201:18, 202:9, 202:10, 202:11, 253:18, 254:3, 254:6, 258:12, 259:11, 261:12, 283:20, 284:5, 284:19, 285:7, 285:8, 285:11, 285:13, 285:14, 287:17, 292:11, 292:17 DOT's [1] - 85:22 doubt [3] - 102:19, 103:2, 103:6 Doug [1] - 22:8 DOUGLAS [2] - 1:4, 1:11 Douglas [7] - 3:2, 15:2, 16:12, 19:5, 24:2, 69:6, 127:14 down [25] - 22:11, 62:8, 67:9, 85:10, 90:16, 99:15, 99:16, 110:13, 111:8, 117:17, 121:12,</p>
---	--	--	--	--

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

148:5, 182:21,
187:17, 187:19,
187:20, 198:15,
198:19, 199:4,
199:5, 199:17,
200:18, 225:22,
267:6, 300:11
Dr^[50] - 8:5, 8:6, 8:10,
8:20, 9:16, 110:16,
110:19, 110:22,
111:2, 111:4,
111:19, 111:22,
112:2, 112:6,
112:14, 112:16,
113:2, 113:16,
114:14, 115:6,
115:10, 115:18,
115:22, 116:6,
116:11, 121:13,
121:16, 121:20,
122:7, 156:7,
162:20, 163:1,
163:6, 163:20,
164:6, 164:10,
164:15, 165:18,
192:1, 193:23,
195:7, 196:8,
196:19, 197:10,
198:3, 201:7,
201:11, 222:23,
223:4, 237:15
draft^[1] - 13:21
drafted^[1] - 14:9
drafting^[1] - 13:16
drew^[2] - 267:11,
267:12
drink^[4] - 67:17,
132:15, 132:19,
132:22
drinking^[1] - 133:12
drinks^[2] - 33:19,
132:18
drive^[9] - 27:10, 31:7,
36:8, 38:8, 67:18,
129:20, 140:7,
168:16, 231:23
driven^[5] - 27:22,
35:6, 159:8, 160:19,
173:12
driver^[16] - 27:16,
29:15, 36:1, 36:5,
36:7, 36:14, 47:7,
52:7, 56:4, 67:4,
67:5, 89:11, 90:12,
95:8, 171:21, 171:23
driver's^[2] - 65:22,
66:2
Driver's^[1] - 69:7
drivers^[12] - 29:5,
66:15, 94:16, 94:17,

94:18, 94:19, 172:1,
287:15, 292:9,
292:15, 294:10,
295:3
drivers'^[2] - 55:22,
55:23
drives^[2] - 251:4,
251:6
driving^[28] - 30:19,
30:21, 30:22, 35:2,
38:19, 46:7, 46:10,
46:11, 46:14, 46:18,
99:3, 105:10,
150:20, 154:13,
155:3, 157:13,
157:19, 157:20,
158:2, 159:3, 159:4,
160:17, 171:9,
174:10, 176:16,
177:21, 194:19,
199:5
Driving^[1] - 24:20
driving"^[1] - 46:8
drop^[2] - 131:9,
259:23
dropped^[3] - 20:11,
132:6, 281:12
dropper^[4] - 226:18,
226:20, 226:22,
227:2
drove^[8] - 129:22,
158:18, 159:12,
159:14, 160:10,
180:14, 198:20,
199:4
Drug^[7] - 3:23, 4:19,
82:21, 83:9, 83:16,
254:13, 260:15
drug^[82] - 9:10, 32:12,
32:14, 32:22, 40:1,
43:6, 45:11, 45:12,
56:5, 62:16, 63:5,
66:17, 67:10, 67:11,
69:13, 69:20, 69:21,
69:23, 70:5, 70:7,
71:5, 72:5, 72:6,
72:10, 72:12, 76:14,
77:3, 78:20, 79:13,
83:15, 84:13, 87:2,
87:7, 87:10, 87:14,
87:18, 88:10, 88:13,
88:15, 93:6, 93:8,
93:10, 93:13,
112:17, 112:23,
113:5, 113:16,
113:21, 115:7,
115:12, 125:19,
132:7, 132:9,
132:20, 132:23,
142:19, 157:21,

192:22, 194:12,
197:2, 197:3,
197:11, 197:22,
198:9, 198:12,
198:17, 198:19,
199:22, 200:19,
200:21, 234:14,
239:5, 249:11,
252:18, 252:21,
254:7, 286:3,
286:15, 287:2, 293:9
drugging^[1] - 66:17
drugs^[17] - 7:8, 7:14,
7:15, 8:23, 9:3, 9:15,
9:18, 10:1, 10:4,
67:18, 84:17, 86:11,
86:16, 88:4, 113:4,
264:4, 264:5
drugstore^[1] - 201:23
ducks^[1] - 23:6
duly^[2] - 5:9, 300:9
Dumas^[1] - 209:14
dumb^[1] - 263:12
Dumont^[1] - 209:13
during^[13] - 34:15,
47:16, 63:10, 79:3,
97:11, 102:3,
154:16, 230:4,
280:20, 284:16,
284:22, 285:2,
289:18
duties^[2] - 84:10,
157:16

E

e-mail^[4] - 41:15,
97:1, 97:4, 236:17
e-mailed^[1] - 14:10
e-mails^[4] - 219:19,
221:6, 221:10, 222:8
east^[1] - 131:23
easy^[1] - 287:1
eat^[1] - 232:7
eaten^[1] - 232:13
eats^[1] - 126:11
edible^[4] - 232:9,
232:11, 232:13,
232:16
EDIBLES^[2] - 1:7,
2:12
Edson^[2] - 48:10,
48:12
effective^[2] - 92:5,
226:9
eight^[1] - 290:19
eighth^[1] - 243:13
either^[13] - 9:3, 10:4,
27:14, 84:8, 98:14,
113:3, 128:17,

160:8, 163:7,
170:16, 186:4,
247:19, 285:19
eligible^[2] - 176:9,
176:10
Elise^[3] - 217:15,
218:11, 218:14
Elixir^[20] - 264:8,
264:15, 264:20,
268:2, 268:18,
268:19, 270:23,
271:8, 271:16,
273:7, 273:18,
274:2, 274:21,
276:1, 276:3, 281:6,
282:18, 283:15,
288:1, 288:8
Elixirs^[1] - 252:2
ELIXIRS^[2] - 1:7, 2:11
ELIZABETH^[1] - 2:4
Elizabeth^[15] - 16:2,
50:4, 50:5, 50:13,
146:10, 147:2,
147:4, 228:9, 230:1,
230:4, 230:9,
230:11, 230:14,
231:22, 244:16
Elmira^[1] - 164:4
elsewhere^[1] - 8:17
embankment^[1] -
99:11
emergency^[2] -
109:14, 109:19
employed^[1] - 89:6
employee^[9] - 58:22,
63:14, 69:13, 78:11,
78:12, 90:6, 148:9,
148:22, 150:10
employee's^[1] - 92:8
employees^[1] - 84:3
employer^[12] - 12:3,
26:11, 43:5, 75:14,
83:13, 87:3, 87:8,
87:11, 107:12,
152:14, 252:15,
259:16
Employer^[2] - 3:20,
72:19
employers^[2] - 88:5,
259:19
Employment^[3] - 3:9,
5:5, 44:11
employment^[13] -
23:9, 27:20, 40:3,
45:18, 46:1, 46:2,
52:20, 63:2, 79:15,
93:8, 93:10, 127:20,
178:22
empty^[3] - 137:9,
137:14, 137:18

EMSL^[3] - 243:3,
246:2, 247:15
end^[12] - 6:17, 6:21,
6:23, 7:4, 26:8,
119:14, 119:15,
129:9, 149:5, 173:2,
175:9, 239:18
Endicott^[4] - 48:6,
48:11, 49:17, 51:8
endurance^[1] - 33:17
endured^[1] - 201:8
enforcement^[1] - 13:4
enrolled^[1] - 37:16
ENT^[22] - 53:18, 58:9,
65:2, 68:19, 75:9,
77:8, 80:11, 83:5,
85:18, 86:22, 91:18,
101:4, 101:7, 101:8,
117:1, 127:3, 255:9,
255:18
entered^[2] - 18:22,
19:1
Enterprise^[132] - 3:8,
3:10, 3:11, 3:17,
3:19, 3:23, 4:3, 4:19,
5:4, 12:3, 18:12,
33:9, 40:4, 41:9,
43:7, 43:9, 44:3,
44:7, 45:13, 45:19,
45:21, 49:11, 50:2,
51:5, 53:1, 53:6,
53:12, 54:11, 54:12,
54:20, 56:10, 57:6,
58:1, 58:4, 58:22,
59:8, 60:8, 60:15,
60:17, 63:3, 64:19,
64:20, 65:18, 67:5,
68:1, 68:6, 68:12,
68:22, 69:19, 71:12,
72:3, 72:5, 72:7,
72:14, 72:18, 72:22,
73:4, 73:18, 73:21,
74:22, 75:12, 77:23,
78:12, 79:23, 82:5,
82:21, 83:12, 84:13,
85:22, 86:15, 87:20,
88:7, 89:6, 90:6,
90:21, 95:13, 95:15,
96:3, 96:5, 96:9,
96:11, 96:15, 96:18,
97:4, 97:18, 99:4,
100:5, 100:18,
101:13, 101:23,
102:20, 103:2,
103:17, 104:13,
104:14, 105:10,
105:15, 127:20,
131:2, 132:9, 140:1,
152:12, 153:5,
154:3, 155:20,

159:20, 160:3, 160:16, 160:19, 167:13, 171:11, 173:16, 180:16, 180:18, 181:15, 186:18, 187:1, 202:14, 202:19, 202:21, 252:17, 252:18, 254:1, 254:13, 255:5, 255:14, 256:7, 256:9, 256:10, 259:1, 260:15, 261:5 Enterprise's [3] - 79:13, 86:11, 261:12 Enterprises [3] - 177:9, 177:15, 178:4 entire [4] - 63:2, 79:22, 87:16, 87:17 entirely [1] - 180:2 entirety [1] - 227:1 entitled [2] - 217:15, 288:22 entity [1] - 184:4 envelope [1] - 245:18 environment [1] - 58:23 equipment [2] - 105:2, 180:20 equivalent [1] - 56:7 ER [1] - 110:7 Eric [2] - 5:14, 12:23 ERIC [1] - 2:8 Erica [6] - 50:19, 51:5, 51:10, 51:12, 51:23, 244:14 Erica's [1] - 51:2 ERIE [1] - 300:3 Erie [1] - 300:6 esophagus [1] - 125:11 ESQ [5] - 2:3, 2:4, 2:8, 2:13, 2:14 established [1] - 82:16 et [1] - 57:18 etc [1] - 152:5 ethicacy [2] - 234:10, 241:20 evaluated [1] - 111:2 event [1] - 192:8 eventually [2] - 113:17, 196:1 Everett [6] - 101:12, 101:15, 101:19, 128:6, 128:8, 129:5 exact [1] - 165:13 exactly [5] - 59:12, 111:11, 181:7, 187:19, 208:21	EXAMINATION [3] - 3:1, 5:12, 251:21 Examination [3] - 1:10, 3:6, 5:2 examination [1] - 45:11 examinations [1] - 45:12 examined [3] - 5:9, 102:2, 158:13 example [2] - 26:7, 151:15 except [2] - 32:21, 249:7 exceptions [2] - 71:7, 71:10 exchange [1] - 221:10 exchanged [1] - 221:6 excuse [1] - 71:20 exercising [1] - 133:8 exhibit [20] - 61:12, 65:1, 77:8, 103:20, 104:6, 116:21, 145:23, 152:3, 152:23, 166:1, 166:8, 170:20, 182:1, 184:2, 210:20, 223:13, 226:5, 233:8, 270:14, 270:17 EXHIBIT [1] - 3:5 Exhibit [142] - 3:6, 3:7, 3:8, 3:10, 3:11, 3:13, 3:15, 3:17, 3:19, 3:21, 3:23, 4:2, 4:3, 4:5, 4:6, 4:7, 4:8, 4:9, 4:10, 4:11, 4:12, 4:13, 4:14, 4:16, 4:17, 4:19, 4:20, 5:2, 5:3, 5:4, 10:11, 11:1, 13:13, 13:14, 43:11, 44:1, 44:22, 45:5, 45:23, 53:12, 53:16, 57:6, 58:2, 61:4, 61:9, 61:11, 61:12, 61:18, 61:19, 64:6, 64:14, 64:17, 64:23, 68:12, 68:16, 68:18, 72:18, 75:2, 75:3, 76:9, 78:5, 80:4, 80:8, 80:9, 82:21, 83:2, 83:3, 83:22, 85:11, 86:21, 89:2, 91:15, 91:17, 100:18, 100:22, 101:1, 101:2, 116:16, 116:20, 126:20, 127:1, 143:14, 143:15, 143:16, 143:17,	143:18, 143:19, 143:20, 144:14, 144:15, 147:19, 147:20, 152:20, 165:22, 167:4, 181:18, 183:15, 183:23, 185:2, 185:4, 188:21, 203:11, 203:15, 211:19, 212:1, 212:5, 215:7, 217:10, 219:12, 223:17, 223:18, 223:19, 223:23, 233:3, 234:19, 240:17, 241:1, 248:7, 254:10, 254:13, 256:4, 256:19, 256:20, 257:1, 257:2, 257:3, 260:20, 260:22, 264:21, 266:10, 270:11, 270:16, 277:2, 277:6, 277:10, 288:4 Exhibits [1] - 65:12 exhibits [3] - 75:3, 184:23, 190:9 existed [2] - 206:5, 281:6 exit [1] - 197:23 expected [1] - 84:4 expense [1] - 198:19 expenses [8] - 36:16, 36:17, 145:9, 145:16, 148:5, 148:10, 148:22, 150:10 experience [1] - 248:11 experiencing [1] - 161:16 explain [3] - 56:10, 56:16, 134:1 explained [3] - 56:18, 79:1, 247:19 explaining [1] - 249:11 explanation [1] - 103:16 Express [2] - 26:16, 40:16 extension [1] - 186:10 extent [1] - 159:11 extra [2] - 100:23, 101:1 extract [2] - 238:22, 241:11 extracted [2] - 263:1, 296:14	eye [4] - 226:18, 226:20, 226:22, 227:2 eyeglasses [2] - 39:13 F face [12] - 31:15, 114:22, 128:7, 128:10, 128:14, 221:13 face-to-face [6] - 31:15, 114:22, 128:7, 128:10, 128:14, 221:13 Facebook [7] - 18:1, 23:14, 23:20, 24:5, 25:15, 25:18, 25:21 facilities [2] - 3:14, 61:5 facility [12] - 71:13, 134:6, 135:7, 135:13, 136:13, 138:8, 138:13, 139:1, 139:4, 139:9, 141:12, 200:19 fact [2] - 70:10, 107:10 facts [4] - 11:16, 13:20, 14:23, 249:8 fail [1] - 71:6 failed [2] - 71:18, 252:18 failure [1] - 82:15 faith [1] - 84:7 fake [2] - 25:22, 25:23 Fall [2] - 204:5, 215:7 familiar [13] - 58:21, 59:4, 76:21, 83:19, 254:3, 257:13, 257:16, 257:23, 258:4, 258:17, 258:20, 259:2 family [10] - 48:23, 169:18, 222:21, 265:3, 265:7, 265:12, 265:13, 265:16, 265:23, 268:9 Family [1] - 123:13 far [12] - 31:20, 36:20, 41:4, 113:6, 151:14, 159:8, 159:11, 160:19, 164:6, 164:8, 209:15, 297:20 Farmers [1] - 262:8 fast [1] - 226:8 fatality [1] - 100:14 father [4] - 16:9, 16:11, 123:15,	123:18 fatty [1] - 123:8 faxed [2] - 179:19, 202:22 FDA [1] - 234:16 February [8] - 99:3, 108:4, 125:6, 128:18, 153:2, 161:14, 161:20, 191:9 Federal [12] - 66:7, 71:1, 71:2, 144:19, 147:21, 257:14, 257:17, 278:6, 281:21, 282:1, 282:21, 285:16 fees [1] - 151:6 fell [1] - 99:9 felt [1] - 231:7 female [1] - 110:17 Fenwick [1] - 144:21 few [11] - 12:4, 25:6, 30:17, 30:18, 41:6, 111:11, 130:8, 171:5, 172:13, 220:9, 272:1 Fidelity [2] - 186:23, 187:6 fields [1] - 93:21 file [1] - 186:11 filed [5] - 146:3, 146:7, 153:9, 153:10, 170:21 fill [16] - 28:10, 28:11, 46:5, 74:6, 89:18, 96:14, 106:1, 134:19, 134:20, 135:4, 136:23, 137:7, 161:3, 179:8, 179:17, 226:22 filled [11] - 28:12, 74:10, 78:13, 92:16, 136:21, 136:22, 137:17, 159:19, 163:12, 179:11 filling [6] - 45:1, 134:23, 135:2, 135:23, 136:3, 163:18 financial [2] - 96:11, 144:10 fine [3] - 113:18, 190:18, 194:17 Finger [1] - 170:9 fingers [1] - 243:11 finish [7] - 249:21, 252:2, 252:5, 267:16, 276:21, 278:22, 298:18 finished [1] - 279:12
--	---	--	--	--

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170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

finishing [1] - 249:20 fired [7] - 11:11, 18:7, 227:6, 241:6, 252:15, 259:23, 283:11 firm [3] - 5:15, 190:21, 190:22 first [73] - 5:9, 14:7, 15:6, 21:18, 21:20, 34:9, 44:5, 44:7, 44:10, 44:17, 46:13, 46:18, 75:11, 76:9, 83:21, 85:11, 85:14, 85:18, 101:3, 101:7, 101:11, 109:14, 109:20, 110:9, 113:11, 117:4, 117:13, 120:15, 120:16, 120:23, 123:12, 140:18, 145:23, 152:3, 153:7, 156:18, 166:2, 166:8, 172:11, 181:13, 181:23, 183:15, 190:9, 205:23, 206:3, 206:20, 227:4, 227:7, 227:20, 229:7, 231:2, 255:21, 257:9, 261:19, 264:19, 265:8, 266:9, 266:18, 267:23, 268:1, 271:13, 277:5, 281:5, 281:14, 283:15, 284:14, 284:16, 288:11, 288:12, 289:20 fit [1] - 33:7 five [18] - 42:1, 50:16, 58:19, 60:9, 62:9, 67:8, 67:9, 101:3, 117:17, 118:12, 119:20, 130:9, 143:2, 164:8, 175:5, 183:3, 279:12 five-week [1] - 118:12 five-year [1] - 42:1 flavor [1] - 243:21 flimsy [1] - 55:5 flip [3] - 30:4, 44:5, 147:18 flipped [1] - 206:23 flipping [2] - 44:19, 207:1 Floor [1] - 2:15 floor [1] - 98:10 flow [1] - 134:23 fluid [1] - 133:12	flush [1] - 133:11 fly [1] - 287:11 focus [1] - 161:12 focussed [2] - 162:6, 213:2 folks [2] - 64:19, 299:2 follow [4] - 41:6, 82:16, 133:3, 142:12 follow-up [1] - 41:6 followed [4] - 149:17, 277:22, 278:6, 285:16 following [21] - 5:1, 53:11, 57:5, 61:3, 64:13, 68:11, 72:17, 80:3, 82:20, 89:1, 100:17, 103:10, 116:15, 126:19, 141:23, 143:13, 203:10, 211:18, 219:11, 254:12, 270:10 follows [1] - 5:10 food [5] - 132:15, 132:16, 132:19, 218:23, 232:7 foods [1] - 125:23 Foods [2] - 239:18, 291:18 FOR [3] - 2:2, 2:6, 2:11 forbid [1] - 194:7 Force [1] - 24:20 foregoing [1] - 300:12 foreign [1] - 148:18 forget [2] - 40:20, 155:11 forgot [1] - 125:12 form [77] - 28:10, 28:12, 28:13, 28:14, 28:15, 28:20, 28:23, 30:15, 39:21, 41:13, 43:1, 45:2, 45:10, 55:14, 58:11, 58:13, 58:15, 65:5, 65:8, 78:15, 78:19, 80:23, 83:21, 92:11, 92:14, 92:16, 95:17, 95:23, 106:1, 107:7, 127:11, 144:13, 178:18, 179:8, 179:11, 179:14, 220:13, 221:22, 233:17, 233:21, 234:2, 239:4, 239:6, 246:20, 253:21, 255:15, 260:21, 262:16, 262:18, 263:11, 264:10, 264:14, 264:23,	265:15, 267:2, 267:15, 268:14, 270:1, 270:5, 271:4, 271:10, 271:15, 271:18, 276:2, 276:12, 276:14, 276:16, 284:21, 285:12, 286:17, 287:4, 293:4, 293:11, 293:16, 294:2, 294:4, 296:9 Form [22] - 4:5, 4:7, 4:8, 4:9, 4:10, 4:11, 4:12, 4:13, 116:16, 143:14, 143:15, 143:16, 143:17, 143:18, 143:19, 143:20, 145:23, 152:4, 166:2, 181:22, 182:2, 185:6 format [1] - 271:17 former [2] - 12:3, 83:12 forms [5] - 61:22, 65:14, 145:10, 159:19, 234:8 formula [1] - 173:15 forth [2] - 137:5, 300:11 forward [3] - 113:21, 144:7, 194:2 four [21] - 44:6, 58:19, 58:21, 62:9, 75:3, 75:4, 75:8, 76:7, 99:22, 101:7, 106:11, 110:21, 119:1, 119:8, 168:16, 175:6, 198:9, 282:13, 282:14, 291:15 four-wheel [1] - 168:16 frank [3] - 10:12, 33:20, 205:11 FRANK [1] - 2:3 Frank [3] - 22:12, 43:15, 222:15 franky [1] - 170:11 Freeport [3] - 204:20, 209:15, 209:19 freight [3] - 26:17, 30:23, 174:12 frequently [2] - 88:7, 249:9 fresh [1] - 98:19 Frezzo [19] - 17:17, 17:20, 17:21, 18:2, 18:5, 18:11, 60:3, 60:9, 73:11, 74:15, 91:3, 96:6, 96:20,	97:1, 103:23, 106:20, 128:2, 128:11, 128:14 Frezzo's [3] - 17:15, 92:15, 203:6 Friday [4] - 128:3, 129:3, 129:4, 130:1 friend [2] - 29:6, 29:7 friendly [3] - 170:8, 170:12, 170:14 Friendly [1] - 170:13 friends [3] - 64:20, 230:4, 230:9 friendships [1] - 64:18 fringe [1] - 36:19 front [4] - 203:17, 254:16, 256:21, 262:10 full [3] - 15:1, 154:13, 300:12 full-time [1] - 154:13 functions [1] - 123:5 future [1] - 45:12	19:15 graduate [1] - 147:6 grainy [1] - 189:2 grand [4] - 20:8, 20:10, 183:3, 183:4 Grandview [19] - 175:18, 177:1, 177:9, 177:15, 177:19, 177:22, 178:1, 178:4, 178:7, 178:19, 178:20, 178:22, 179:4, 179:7, 179:12, 179:20, 180:7, 180:12, 185:8 great [4] - 42:8, 143:8, 211:14, 252:12 Green [9] - 175:19, 175:20, 175:21, 176:1, 176:5, 176:12, 177:1, 177:8, 178:16 ground [1] - 5:22 GTA [2] - 20:6, 20:7 guard [1] - 55:5 guess [11] - 59:20, 95:18, 142:20, 169:19, 184:16, 200:7, 236:8, 238:23, 242:20, 264:3, 272:11 guessing [2] - 228:1, 239:2 guesstimate [1] - 279:3 Gully [4] - 26:19, 27:1, 27:14, 28:2 gully [2] - 26:23, 27:2 GULLY [1] - 27:3 Guthrie [3] - 121:12, 121:13, 121:21 guys [6] - 33:15, 98:11, 146:3, 190:20, 219:7, 219:19				
G								
game [1] - 129:9 gamer [1] - 20:9 gap [1] - 178:22 Gary [7] - 31:10, 32:6, 33:1, 33:5, 34:8, 34:9, 34:19 gas [3] - 93:21, 256:14 gear [1] - 38:15 gears [1] - 144:9 general [3] - 30:23, 106:15, 148:19 generic [1] - 192:6 Genesee [1] - 290:10 Genox [1] - 40:15 gentleman [1] - 16:4 gentlemen [1] - 128:22 given [13] - 6:12, 14:7, 14:8, 66:5, 81:3, 82:6, 83:15, 89:21, 137:19, 155:11, 157:14, 199:15, 199:16 gloves [1] - 38:19 go-to [1] - 163:23 goal [1] - 105:20 God [2] - 147:9, 170:4 gotcha [3] - 26:10, 137:6, 182:3 governing [1] - 76:19 Government [1] - 146:4 grade [6] - 19:3, 19:7, 19:9, 19:10, 19:12,								
H								
habit [1] - 214:11 Hacienda [1] - 15:22 hair [1] - 70:18 half [14] - 36:6, 53:2, 53:6, 63:11, 79:23, 88:1, 93:17, 94:12, 94:14, 95:2, 97:9, 107:5, 139:7, 139:8 hand [26] - 44:8, 44:13, 53:18, 58:8, 65:2, 68:19, 75:7, 80:11, 83:5, 83:9,								

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170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

85:10, 85:17, 86:21, 91:18, 92:1, 117:1, 127:3, 127:7, 135:6, 137:5, 145:18, 181:23, 182:1, 215:6, 245:23, 270:15 hand-delivered [1] - 245:23 handbook [1] - 66:5 handing [1] - 210:19 handle [1] - 135:13 handling [1] - 137:13 handwriting [3] - 44:17, 92:11, 92:13 handwritten [1] - 159:17 hard [4] - 26:9, 188:16, 251:4, 251:6 HARP [1] - 1:4 Harp [1] - 2:17 HARP-HORN [1] - 1:4 Harp-Horn [1] - 2:17 HARRING [1] - 174:3 Harring [15] - 29:21, 29:22, 30:14, 30:16, 171:13, 174:1, 174:3, 174:7, 174:11, 175:10, 175:15, 175:17, 175:21, 175:23, 176:5 hazardous [2] - 106:8, 106:17 HazMat [2] - 31:5, 35:13 head [5] - 6:7, 40:11, 41:2, 128:1, 128:5 heading [8] - 44:10, 83:22, 117:5, 117:8, 118:20, 123:13, 226:4, 233:10 headline [1] - 207:7 headquarters [1] - 27:5 health [8] - 39:2, 39:4, 234:9, 237:1, 237:4, 237:7, 241:14, 241:20 healthy [2] - 298:17, 298:18 Healthy [5] - 217:15, 218:7, 218:10, 218:13, 263:23 hear [2] - 133:19, 178:13 heard [8] - 95:8, 102:11, 133:21, 139:10, 206:7, 206:8, 206:9, 268:10	heart [2] - 125:7, 155:12 hearts [3] - 297:11, 297:12, 298:8 heat [3] - 164:20, 164:21, 165:17 heavy [4] - 287:7, 293:2, 293:21, 294:7 Heights [1] - 15:22 held [2] - 1:11, 190:4 help [8] - 6:16, 91:7, 165:3, 207:22, 247:11, 291:20, 298:17 helped [2] - 235:12, 295:12 hemp [36] - 238:17, 238:22, 239:1, 241:11, 259:8, 262:19, 263:2, 265:10, 266:13, 267:22, 284:3, 284:6, 284:18, 285:10, 287:22, 291:18, 291:19, 291:22, 295:12, 296:13, 296:15, 296:21, 297:1, 297:3, 297:4, 297:7, 297:11, 297:12, 297:17, 298:5, 298:8, 298:11, 298:13, 298:15 hemp-based [5] - 265:10, 266:13, 284:3, 284:18, 285:10 Hep [1] - 122:19 Hepatitis [16] - 119:4, 119:10, 119:13, 119:17, 120:8, 120:14, 120:18, 121:1, 121:10, 121:18, 122:21, 122:23, 123:15, 123:19, 123:22, 124:11 herbal [1] - 86:7 hereby [2] - 300:6, 300:12 herein [1] - 300:10 hereinbefore [1] - 300:8 hereunto [1] - 300:18 hermit [1] - 230:10 herniated [4] - 117:22, 118:1, 118:6, 118:18 herniation [1] - 119:7 herself [2] - 129:15, 231:23	High [26] - 4:15, 4:16, 18:15, 203:11, 203:21, 204:2, 204:5, 206:1, 211:10, 211:19, 212:4, 212:9, 217:15, 218:7, 218:10, 218:13, 220:20, 235:22, 240:16, 261:21, 263:23, 264:8, 264:17, 288:3, 288:4 high [14] - 18:14, 18:23, 19:1, 19:14, 149:9, 174:12, 261:2, 261:22, 262:21, 264:2, 264:3, 264:4, 264:5 higher [2] - 101:19, 209:9 Highway [4] - 48:6, 48:9, 49:16, 257:18 highway [1] - 161:7 himself [1] - 29:15 hire [7] - 34:13, 41:14, 42:2, 43:5, 55:2, 172:2, 188:4 hired [6] - 31:21, 60:11, 89:21, 93:4, 93:9, 93:14 histories [2] - 55:22, 56:1 History [5] - 117:5, 117:9, 117:14, 118:21, 123:13 history [4] - 55:4, 117:18, 120:6, 126:6 hit [4] - 55:5, 55:8, 99:10, 157:5 hmm [15] - 8:7, 22:6, 34:12, 47:13, 53:1, 74:21, 77:2, 78:1, 112:11, 131:12, 163:18, 204:8, 223:6, 271:11, 297:13 holding [1] - 256:4 Holdings [2] - 5:18, 272:2 HOLDINGS [2] - 1:7, 2:7 home [32] - 12:17, 48:16, 48:18, 48:21, 48:23, 49:2, 49:6, 49:8, 49:19, 73:6, 104:20, 112:3, 129:14, 174:19, 174:20, 174:22, 175:2, 175:4, 175:5, 175:7, 197:1,	198:20, 209:9, 210:5, 220:23, 224:8, 231:18, 240:6, 242:2, 250:17, 272:23 honestly [2] - 88:9, 253:9 hook [1] - 131:9 Horizon [3] - 40:21, 40:22, 40:23 Horn [10] - 2:17, 3:2, 15:2, 16:12, 22:5, 23:18, 24:1, 24:2, 69:6, 146:10 horn [21] - 5:14, 11:1, 61:8, 80:7, 99:2, 100:21, 101:9, 116:19, 126:23, 143:23, 167:4, 203:14, 211:23, 222:8, 223:18, 250:10, 251:16, 251:23, 255:2, 270:15, 280:9 HORN [4] - 1:4, 1:11, 211:1 Horn's [8] - 152:16, 167:10, 167:14, 167:16, 167:22, 181:20, 182:13, 188:3 hospital [2] - 109:17, 110:2 hot [1] - 189:22 hotels [1] - 145:19 hour [9] - 33:2, 34:15, 107:5, 131:7, 131:10, 139:5, 139:7, 139:8 hourly [2] - 35:23, 36:3 hours [24] - 7:10, 7:15, 9:1, 9:4, 9:19, 9:22, 10:2, 10:5, 35:23, 36:2, 36:13, 70:6, 70:22, 71:4, 71:9, 92:19, 160:11, 174:18, 228:6, 252:8, 279:16, 279:22, 280:4, 280:7 house [19] - 49:20, 49:21, 50:3, 51:13, 89:19, 90:3, 90:6, 146:18, 147:2, 227:11, 227:23, 228:3, 228:4, 230:2, 242:10, 242:12, 242:13, 242:20, 251:2 HOUSH [98] - 2:3, 2:3,	7:19, 7:23, 10:13, 10:15, 10:20, 12:23, 13:9, 14:20, 17:2, 17:5, 22:7, 22:10, 28:23, 30:15, 33:14, 33:22, 34:2, 42:7, 43:1, 43:17, 43:20, 95:17, 95:23, 98:2, 98:5, 98:9, 98:20, 178:18, 189:22, 190:17, 191:2, 205:14, 205:21, 210:18, 211:6, 211:14, 220:13, 221:22, 222:1, 222:4, 222:6, 222:9, 233:17, 233:21, 234:2, 236:19, 239:4, 239:6, 252:8, 253:21, 255:15, 260:21, 262:16, 262:18, 263:11, 264:10, 264:14, 264:23, 265:15, 267:2, 267:15, 268:14, 270:1, 270:5, 271:4, 271:10, 271:15, 271:18, 276:2, 276:12, 276:14, 276:16, 276:20, 278:16, 278:20, 279:5, 279:15, 279:18, 280:1, 280:5, 284:21, 285:12, 286:17, 287:4, 289:23, 290:4, 290:10, 290:16, 293:4, 293:11, 293:16, 294:2, 294:4, 294:15, 296:9, 296:16 Housh [2] - 14:13, 14:18 Houston [2] - 3:19, 72:18 HPLC [3] - 233:11, 233:13, 233:22 HR [2] - 178:13, 184:8 Hunt [1] - 40:13 hydrocodone [21] - 9:2, 9:5, 112:9, 112:10, 112:22, 114:1, 114:8, 155:9, 155:12, 155:17, 156:1, 163:10, 163:11, 165:18, 191:14, 192:16, 192:18, 193:18,
--	--	--	---	---

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

194:15, 194:18, 194:19 hypertension [1] - 8:1	292:22 impression [3] - 286:12, 292:5, 294:18 IN [1] - 300:18 in-house [2] - 89:19, 90:3 Inc [1] - 275:4 INC [2] - 1:7, 2:7 incident [3] - 43:6, 100:2, 104:11 include [1] - 39:7 includes [1] - 233:1 including [5] - 62:20, 63:6, 66:17, 67:1, 79:17 income [16] - 144:21, 145:6, 149:18, 150:5, 152:11, 152:21, 153:8, 153:12, 153:13, 167:6, 181:20, 182:12, 184:1, 185:3, 185:4, 186:11 Incorporated [5] - 5:17, 40:20, 177:2, 177:15, 178:14 indefinite [1] - 42:1 Indian [1] - 40:13 Indiana [1] - 168:5 indicate [6] - 76:11, 235:1, 249:15, 257:16, 257:23, 258:4 indication [1] - 255:13 industry [1] - 259:20 infection [2] - 126:6, 126:13 inflammation [4] - 196:1, 230:20, 291:20, 295:12 inflammatory [3] - 191:10, 191:13, 192:11 information [20] - 46:2, 46:5, 56:2, 56:3, 57:2, 86:23, 103:12, 141:1, 144:11, 144:19, 148:14, 167:6, 209:23, 216:22, 221:1, 225:22, 232:19, 233:1, 236:22, 291:22 ingredients [3] - 238:18, 238:20, 239:3 initial [6] - 65:19, 136:11, 137:2, 137:23, 138:1, 187:7	initials [1] - 138:4 injured [3] - 107:15, 107:18, 107:20 injuries [2] - 153:16, 161:13 injury [3] - 100:13, 161:19, 162:13 Inside [1] - 262:7 inside [11] - 12:18, 138:21, 138:22, 139:4, 206:14, 212:18, 212:21, 216:6, 217:6, 242:7, 242:8 instance [1] - 157:9 instant [2] - 201:18, 201:20 instructions [3] - 134:17, 135:3, 142:12 insurance [6] - 36:21, 39:2, 39:4, 39:7, 39:14, 180:6 intended [1] - 238:6 intention [1] - 230:14 interacted [2] - 90:21, 139:1 interaction [1] - 91:1 interest [3] - 149:18, 217:3, 247:6 interested [2] - 218:17, 300:16 interesting [1] - 107:11 Internet [10] - 64:4, 151:2, 151:6, 151:10, 272:18, 272:23, 273:4, 277:16, 288:7, 289:1 Interstate [1] - 26:15 intervals [1] - 194:13 interview [5] - 31:22, 34:15, 34:16, 89:16, 289:13 information [1] - 292:8 investigating [1] - 103:3 investigation [1] - 101:22 Invoice [2] - 4:20, 270:11 invoice [1] - 270:18 involved [2] - 220:17, 252:22 involvement [3] - 13:16, 13:19, 91:7 IRS [1] - 186:4 issue [7] - 128:17, 129:1, 143:5, 204:4, 204:5, 222:2, 261:1	issues [4] - 108:11, 108:12, 175:12, 251:18 item [1] - 69:10 itemized [1] - 147:20 items [2] - 3:13, 61:4 Ithaca [2] - 121:12, 164:4 itself [4] - 39:21, 130:17, 136:10, 243:19	107:7, 128:2, 128:11, 128:14, 145:1, 203:6 Johnson [1] - 22:16 joint [4] - 146:3, 146:7, 152:7, 205:3 judge [1] - 161:2 judgement [1] - 84:7 July [3] - 156:3, 161:11, 162:12 June [3] - 156:3, 161:11, 162:11 Jury [2] - 3:7, 5:3
I			J	K
I-M-B [1] - 16:20 ice [2] - 196:2, 196:5 ICX [62] - 26:12, 26:14, 26:15, 26:20, 27:1, 27:5, 27:9, 27:11, 27:14, 27:17, 28:1, 28:2, 28:3, 28:4, 28:10, 29:2, 29:4, 29:12, 30:19, 30:20, 31:6, 32:3, 32:9, 32:11, 34:7, 35:1, 35:17, 35:22, 36:8, 36:17, 36:19, 36:21, 37:3, 37:5, 37:8, 37:12, 37:22, 38:4, 38:8, 38:12, 38:17, 38:19, 38:23, 39:5, 39:16, 56:13, 57:1, 88:11, 95:22, 106:4, 106:6, 106:9, 178:19, 178:20, 178:23, 179:2, 185:9, 185:14, 185:17, 188:20, 189:6, 252:13 ICX's [1] - 26:17 idea [8] - 23:3, 23:12, 69:18, 135:18, 143:6, 166:23, 233:14, 233:15 identification [19] - 5:1, 53:11, 57:5, 61:3, 64:13, 68:11, 72:17, 80:3, 82:20, 89:1, 100:17, 116:15, 126:19, 143:13, 203:10, 211:18, 219:11, 254:12, 270:10 illegal [6] - 62:16, 63:5, 63:16, 64:1, 67:3, 285:20 Illegal [2] - 3:13, 61:4 Illness [3] - 117:6, 117:10, 117:14 illness [1] - 117:19 imagine [7] - 14:7, 56:6, 66:23, 119:19, 120:7, 139:23, 264:5 Imboden [2] - 16:16, 16:20 immediately [1] - 134:8 implied [2] - 292:19,			J.B [1] - 40:13 jack [1] - 38:3 James [11] - 15:2, 19:5, 23:18, 24:1, 24:3, 24:4, 104:6, 266:3, 266:5, 268:4, 284:18 JC [1] - 252:1 JEAN [1] - 2:13 JEAN-CLAUDE [1] - 2:13 Jeez [2] - 51:14, 108:22 Jeffrey [2] - 14:10, 236:8 Jersey [9] - 27:6, 31:11, 32:15, 71:13, 71:15, 72:12, 73:1, 129:21, 129:22 Jesus [1] - 55:13 Job [1] - 62:11 job [30] - 28:5, 42:15, 42:19, 46:18, 58:16, 62:16, 63:5, 74:21, 76:4, 81:7, 90:7, 90:11, 96:15, 148:5, 153:4, 157:16, 171:20, 172:8, 173:5, 173:19, 175:14, 175:18, 176:2, 176:19, 176:21, 178:6, 178:9, 179:7, 195:22, 259:1 John [39] - 17:14, 17:17, 17:19, 17:21, 18:2, 18:5, 18:11, 59:16, 59:17, 60:3, 60:8, 60:9, 60:11, 60:14, 60:17, 73:11, 73:13, 74:15, 77:22, 78:2, 82:9, 82:10, 91:3, 92:15, 92:16, 96:6, 96:20, 97:1, 101:17, 101:20, 103:23, 106:20,	Kansas [2] - 17:18, 139:13 Keber [6] - 289:13, 291:23, 292:6, 292:8, 292:9, 292:14 Keber's [1] - 239:7 Keenan [8] - 40:15, 73:17, 73:23, 74:7, 74:10, 74:12, 74:16, 74:21 keep [7] - 28:18, 28:20, 33:21, 40:6, 40:7, 40:23, 96:12 keeping [1] - 131:20 Kentucky [1] - 139:14 kept [5] - 150:6, 159:14, 187:8, 259:6, 272:8 kick [1] - 96:12 kidney [2] - 126:6, 126:13 kids [1] - 146:15 kill [1] - 123:11 kind [28] - 30:19, 37:14, 38:12, 42:17, 66:20, 67:16, 81:1, 81:17, 89:9, 94:9, 96:11, 113:9, 157:1, 161:16, 163:9, 163:23, 167:16, 168:15, 174:9, 176:15, 208:4, 213:6, 214:7, 215:20, 222:3, 224:17, 250:19, 252:21 kinds [2] - 100:7, 103:10 kitchen [2] - 224:9, 224:11 KL [14] - 29:21, 29:22, 30:14, 30:16, 171:13, 173:23, 174:7, 174:11,

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

<p>175:9, 175:15, 175:17, 175:21, 175:23, 176:5 knowing [1] - 234:13 knowledge [7] - 21:22, 44:18, 45:7, 62:7, 135:19, 215:16, 217:5 knowledgeable [1] - 150:6 known [4] - 19:5, 22:5, 60:14, 149:14 knows [2] - 240:14, 240:19 Kosaka [2] - 32:21, 32:22 Kosaka[sic] [1] - 32:17 Kuhnle [10] - 171:14, 172:19, 172:20, 172:21, 172:22, 172:23, 173:3, 173:18, 173:21, 174:2 KUHNLE [1] - 172:23 KUHNLEE [1] - 173:1</p>	<p>199:19 Lakes [1] - 170:9 large [1] - 136:18 last [56] - 7:10, 7:14, 8:8, 9:1, 9:4, 9:19, 9:21, 10:2, 10:5, 15:4, 15:7, 15:14, 15:16, 17:19, 17:23, 19:18, 21:7, 22:1, 22:2, 22:17, 23:1, 23:4, 30:13, 35:20, 41:23, 44:19, 44:21, 45:4, 46:1, 50:23, 51:12, 54:21, 67:23, 75:3, 76:1, 78:5, 94:22, 101:8, 109:8, 119:14, 126:1, 165:9, 165:14, 172:12, 184:2, 188:21, 194:21, 194:23, 196:8, 196:10, 196:11, 196:12, 216:9, 224:5, 269:20, 294:20 lasted [1] - 171:5 late [2] - 49:13, 186:7 Laura [3] - 54:16, 67:21, 68:5 Laura's [1] - 54:21 lav [1] - 33:20 LAW [1] - 2:3 law [5] - 5:15, 13:4, 71:1, 71:2, 265:23 laws [14] - 66:4, 66:12, 66:14, 66:18, 66:20, 76:18, 76:20, 253:18, 277:23, 278:7, 281:22, 282:2, 282:21, 285:17 lawsuit [16] - 11:6, 11:16, 12:9, 13:15, 14:13, 14:18, 18:3, 18:6, 25:13, 34:10, 34:11, 34:17, 78:3, 221:8, 221:11, 221:14 lawyer [5] - 188:5, 188:6, 188:7, 188:17, 298:22 lawyers [2] - 5:19, 216:13 leaf [1] - 262:5 learned [8] - 260:7, 261:19, 271:7, 284:15, 288:1, 288:12, 288:15, 289:20 learning [1] - 288:23</p>	<p>least [5] - 8:14, 17:5, 110:21, 115:9, 227:11 leave [3] - 131:8, 178:4, 210:6 leaving [1] - 290:2 lecture [1] - 77:2 led [2] - 206:13, 286:2 left [16] - 44:8, 57:22, 68:6, 85:10, 94:13, 115:15, 135:16, 139:9, 172:9, 178:6, 178:20, 180:16, 181:23, 182:1, 216:8, 243:14 left-hand [4] - 44:8, 85:10, 181:23, 182:1 legal [4] - 15:12, 19:17, 64:1, 258:8 legality [1] - 13:1 legally [3] - 13:2, 15:10, 19:19 length [1] - 169:16 Leonard's [1] - 40:16 less [13] - 36:12, 87:22, 88:2, 107:11, 130:9, 139:5, 139:7, 187:22, 187:23, 188:10, 188:13, 188:14, 208:15 letter [6] - 41:14, 42:11, 42:17, 42:18, 43:4, 127:22 letters [5] - 26:14, 42:4, 42:21, 42:23, 43:2 levels [2] - 86:17 LI [1] - 7:21 Liberty [1] - 99:21 lied [1] - 94:9 life [10] - 36:21, 87:17, 180:6, 187:15, 200:8, 206:3, 268:1, 268:2, 285:2 lifetime [1] - 87:16 ligaments [1] - 162:4 likely [5] - 81:10, 81:18, 179:16, 229:19, 231:15 limit [2] - 70:13, 70:20 LINDSTROM [6] - 2:14, 34:5, 98:12, 190:14, 254:18, 254:21 line [19] - 26:17, 110:1, 134:20, 148:7, 149:18, 152:4, 166:3, 166:4, 166:13, 182:4, 183:14, 184:14,</p>	<p>184:15, 185:5, 185:11, 197:13, 249:10, 276:21, 278:22 lined [4] - 175:14, 176:2, 176:21, 178:6 lines [3] - 67:8, 67:9, 117:18 Lisinopril [5] - 7:16, 7:18, 7:19, 7:20, 8:4 list [7] - 40:7, 69:11, 86:4, 91:10, 145:18, 238:19 listed [12] - 67:2, 85:14, 85:19, 86:5, 87:4, 146:13, 149:18, 153:12, 218:18, 218:21, 219:1 listen [2] - 239:19, 265:12 listened [1] - 240:3 listening [1] - 248:11 lists [1] - 45:23 literally [1] - 24:15 live [9] - 21:5, 48:4, 48:9, 48:23, 50:7, 50:21, 93:20, 146:19, 164:1 lived [7] - 19:10, 48:1, 48:3, 48:8, 48:20, 49:16, 51:21 livelihood [1] - 263:5 liver [2] - 123:5, 123:8 lives [1] - 49:21 living [24] - 17:17, 20:22, 23:5, 46:10, 46:13, 46:14, 47:2, 47:14, 47:16, 50:2, 50:5, 51:5, 51:7, 51:10, 51:12, 51:17, 52:2, 146:10, 146:15, 147:2, 147:14, 207:18, 228:10, 230:1 LLC [15] - 1:7, 2:7, 5:18, 152:16, 167:10, 167:14, 167:17, 167:19, 167:23, 181:21, 182:13, 188:3, 188:4, 188:8, 188:15 LLP [1] - 2:13 load [8] - 94:11, 129:15, 129:18, 173:13, 199:15, 199:16, 199:18 loading [5] - 36:4, 37:19, 37:21, 38:1, 52:11</p>	<p>loan [3] - 183:5, 183:10, 183:12 local [5] - 70:2, 92:19, 93:18, 93:19, 148:18 located [1] - 8:15 lock [1] - 52:13 Lockheed [1] - 51:11 Lockwood [3] - 5:8, 47:21, 186:15 log [4] - 131:18, 159:22, 160:4, 204:15 logs [4] - 131:20, 159:16, 159:17, 160:15 long-term [2] - 10:6, 10:8 look [25] - 34:20, 55:2, 55:3, 61:18, 83:19, 130:5, 149:19, 152:2, 165:22, 207:11, 217:9, 224:13, 250:12, 255:16, 256:18, 256:19, 257:8, 259:14, 260:18, 260:20, 260:22, 267:1, 269:6, 282:4, 282:9 looked [5] - 185:23, 216:10, 263:18, 271:22, 283:4 looking [16] - 29:5, 44:1, 122:16, 148:2, 172:1, 192:9, 212:5, 215:21, 215:23, 226:2, 238:5, 238:18, 249:7, 250:11, 278:14, 295:14 looks [6] - 54:6, 54:11, 54:12, 82:9, 92:15, 224:16 loss [1] - 10:9 lost [4] - 41:9, 225:4, 225:14, 225:20 loud [2] - 190:17, 253:6 Louisiana [6] - 99:23, 153:8, 153:9, 153:13, 170:21, 171:1 low [5] - 115:19, 115:20, 115:21, 172:7, 173:10 lower [6] - 86:17, 107:22, 107:23, 162:14, 238:4 lowest [1] - 123:12 lumbar [2] - 115:20,</p>
--	---	---	--	---

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

119:8 lunch [6] - 57:17, 98:3, 98:7, 143:8, 144:1, 144:4	28:13, 28:16, 229:14, 245:22 mails [4] - 219:19, 221:6, 221:10, 222:8 Main [3] - 48:6, 48:8, 49:16 male [1] - 109:6 managed [1] - 60:2 manager [11] - 31:8, 59:21, 60:1, 60:8, 77:4, 77:22, 101:18, 106:15, 129:11, 129:12, 202:22 managers [1] - 60:6 manual [2] - 66:5, 81:16 Manual [1] - 69:7 manufactured [3] - 86:8, 234:8, 241:19 map [1] - 160:22 March [7] - 4:4, 43:10, 61:23, 65:11, 100:18, 119:23, 120:13 Marijuana [17] - 4:14, 4:16, 5:17, 203:11, 207:8, 211:19, 240:15, 262:1, 272:6, 275:4, 276:6, 288:2, 288:4, 288:22, 289:21, 295:20, 296:4 marijuana [31] - 67:1, 85:15, 86:5, 200:7, 207:22, 210:1, 238:16, 253:1, 253:4, 253:11, 253:13, 253:16, 259:7, 259:9, 259:10, 260:3, 260:7, 261:6, 261:7, 262:4, 262:20, 263:8, 264:9, 265:5, 266:6, 267:20, 283:19, 285:5, 285:9, 295:23, 296:12 MARIJUANA [2] - 1:7, 2:7 marijuana's [1] - 85:19 marijuana-based [5] - 265:5, 266:6, 283:19, 285:5, 295:23 marijuana/cancer [1] - 207:6 Marinol [4] - 200:3, 200:6, 200:8, 200:10 Marissa [3] - 1:11,	26:9, 276:22 MARISSA [2] - 300:5, 300:22 Marissa's [1] - 279:21 mark [2] - 223:12, 254:9 marked [41] - 5:1, 10:11, 13:13, 43:11, 44:14, 53:11, 53:15, 57:5, 61:3, 61:8, 64:13, 68:11, 68:16, 72:17, 75:1, 80:3, 80:7, 82:20, 89:1, 91:15, 100:17, 100:21, 116:15, 116:19, 126:19, 126:23, 143:13, 152:19, 167:3, 181:17, 183:22, 203:10, 203:14, 211:18, 212:1, 219:11, 223:14, 223:18, 240:17, 254:12, 270:10 Market [1] - 262:8 marking [1] - 53:9 married [7] - 15:15, 16:5, 21:12, 21:14, 21:16, 21:18, 22:2 Marten [10] - 46:19, 46:21, 47:1, 47:5, 47:10, 52:4, 52:16, 52:19, 55:4, 88:5 Martin [1] - 51:11 masking [1] - 219:5 Mason [1] - 184:10 MasterCard [3] - 213:8, 213:23, 214:8 material [2] - 106:8, 106:17 matter [7] - 98:13, 151:14, 190:20, 260:14, 261:1, 294:19, 296:8 matters [1] - 296:11 MAZZOLA [43] - 2:13, 10:16, 15:6, 26:13, 34:4, 61:10, 101:6, 143:9, 162:21, 166:6, 166:9, 171:17, 173:1, 194:21, 195:1, 195:5, 209:14, 210:21, 211:5, 220:6, 223:12, 223:15, 233:7, 249:19, 249:22, 250:4, 251:21, 254:15, 254:23, 270:13, 278:18,	279:1, 279:7, 279:11, 279:17, 279:19, 280:8, 286:13, 290:3, 290:8, 290:13, 290:18, 295:2 Mazzola [2] - 3:3, 252:1 McConville [3] - 77:22, 78:2, 101:17 McDonough [2] - 217:15, 218:11 McDonough's [1] - 218:14 MDO [2] - 223:2, 223:3 meals [1] - 149:4 mean [32] - 24:14, 25:23, 28:7, 35:6, 40:9, 42:5, 46:8, 66:8, 67:18, 70:1, 73:8, 77:14, 93:19, 98:15, 99:8, 125:9, 129:8, 140:11, 140:13, 149:8, 160:10, 169:11, 171:3, 208:15, 235:5, 242:8, 257:2, 264:2, 272:4, 273:12, 274:9, 279:15 means [2] - 285:18, 298:21 media [2] - 25:10, 271:17 Medical [14] - 4:14, 4:16, 5:17, 118:21, 203:11, 207:8, 211:19, 240:15, 262:1, 272:5, 275:4, 276:6, 295:20, 296:4 medical [9] - 84:6, 120:6, 126:6, 139:15, 179:22, 179:23, 207:22, 209:23, 238:16 MEDICAL [2] - 1:7, 2:6 medication [21] - 8:1, 110:23, 111:12, 111:17, 112:5, 114:14, 115:2, 125:9, 155:6, 155:12, 163:6, 163:9, 191:10, 191:13, 192:11, 192:12, 192:14, 192:17, 194:13, 196:15, 196:16 Medication [1] - 83:23 medications [1] - 84:5 medicinal [1] - 235:4	MEDTOX [7] - 12:9, 142:8, 142:11, 142:20, 142:22, 197:8, 198:16 meet [4] - 31:6, 33:1, 221:13, 290:6 meeting [7] - 31:17, 32:6, 33:3, 33:4, 33:5, 221:20 members [1] - 167:19 memory [7] - 10:6, 10:9, 30:6, 44:2, 61:21, 209:1, 228:2 mess [1] - 247:20 message [1] - 131:5 MESSNER [1] - 2:13 met [7] - 28:9, 31:8, 31:14, 126:15, 126:16, 171:21, 228:6 mid [2] - 154:20, 155:19 mid-May [2] - 154:20, 155:19 middle [3] - 154:12, 164:3, 189:9 might [17] - 13:3, 24:2, 24:22, 91:12, 95:21, 125:8, 142:18, 143:4, 150:5, 166:23, 204:21, 207:22, 210:1, 226:3, 237:7, 241:14, 251:7 Mike [2] - 16:6, 16:9 mile [9] - 35:5, 35:6, 35:9, 104:7, 104:22, 160:20, 173:12, 180:14, 180:15 mileage [3] - 35:16, 35:22, 161:2 miles [7] - 99:22, 104:10, 104:12, 104:13, 104:14, 164:9, 172:7 military [1] - 293:15 milk [3] - 297:3, 297:4, 298:13 million [6] - 104:7, 104:10, 104:12, 104:14, 104:22 mind [5] - 33:21, 53:9, 86:6, 190:23, 261:9 minor [4] - 15:4, 15:8, 20:3, 20:6 minutes [12] - 30:17, 76:14, 93:20, 130:8, 130:9, 134:11, 252:3, 279:3, 279:13, 290:14,
--	--	---	--	--

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

<p>290:19 miscellaneous [1] - 148:6 misplaced [2] - 225:10, 226:1 misprinted [1] - 221:5 mistakes [1] - 185:21 misuse [1] - 79:13 MJMA [9] - 271:22, 272:2, 272:4, 272:14, 274:8, 274:16, 289:8, 295:19, 296:3 MJMA's [1] - 291:21 MJMA.com [2] - 272:10, 295:7 mobile [4] - 48:16, 48:18, 48:21, 49:19 mom [11] - 15:15, 15:19, 207:3, 207:14, 207:18, 207:21, 208:1, 208:6, 208:11, 216:16, 216:18 mom's [1] - 210:2 moment [4] - 108:23, 183:14, 252:12, 258:15 Mondorf [3] - 144:21, 145:1, 149:15 money [9] - 161:6, 166:19, 180:3, 182:17, 186:20, 187:5, 187:8, 187:14, 189:15 Montana [2] - 99:21, 109:23 month [7] - 171:18, 173:4, 173:7, 177:13, 196:13, 208:16, 208:17 monthly [1] - 150:13 months [12] - 31:21, 52:7, 154:10, 161:11, 161:12, 162:11, 171:5, 172:13, 174:8, 175:22, 177:11, 177:14 mood [1] - 86:6 morning [7] - 11:8, 47:22, 144:3, 200:17, 200:18, 252:7, 252:9 mortgage [4] - 49:6, 49:8, 49:13, 149:21 most [3] - 24:4, 159:2, 159:3 mostly [1] - 144:13 mother [4] - 19:10,</p>	<p>26:21, 26:22, 265:23 mother-in-law [1] - 265:23 motioning [1] - 243:11 motions [1] - 137:5 Motor [1] - 66:7 Motrin [5] - 192:23, 193:1, 193:2, 193:7, 193:9 move [2] - 20:12, 47:19 moved [4] - 19:12, 20:21, 47:18, 52:1 moving [2] - 38:3, 61:10 MR [206] - 5:12, 7:19, 7:23, 8:3, 10:13, 10:14, 10:15, 10:16, 10:18, 10:20, 10:23, 12:23, 13:7, 13:9, 13:11, 14:20, 15:6, 17:2, 17:5, 17:9, 22:7, 22:10, 26:13, 28:23, 30:15, 33:14, 33:15, 33:22, 34:1, 34:2, 34:4, 34:6, 42:7, 43:1, 43:14, 43:17, 43:18, 43:20, 43:23, 53:14, 57:11, 61:7, 61:10, 64:16, 68:15, 72:21, 80:6, 83:1, 89:4, 95:17, 95:23, 98:2, 98:4, 98:5, 98:6, 98:9, 98:11, 98:15, 98:18, 98:20, 99:1, 100:20, 101:6, 116:18, 126:22, 143:9, 143:22, 162:21, 166:6, 166:7, 166:9, 166:10, 171:17, 173:1, 178:18, 189:22, 190:2, 190:6, 190:16, 190:17, 190:19, 191:2, 191:4, 194:21, 194:23, 195:1, 195:5, 195:6, 203:13, 205:11, 205:14, 205:17, 205:21, 205:22, 209:14, 210:18, 210:21, 210:22, 211:3, 211:5, 211:6, 211:12, 211:14, 211:21, 219:14, 220:6, 220:13, 221:22, 221:23, 222:1, 222:3, 222:4, 222:5, 222:6, 222:7,</p>	<p>222:9, 222:14, 223:12, 223:14, 223:15, 223:16, 233:6, 233:7, 233:17, 233:21, 234:2, 236:19, 239:4, 239:6, 249:19, 249:21, 249:22, 250:1, 250:4, 250:8, 251:21, 252:8, 253:21, 254:15, 254:20, 254:23, 255:15, 257:2, 260:21, 262:16, 262:18, 263:11, 264:10, 264:14, 264:23, 265:15, 267:2, 267:15, 268:14, 270:1, 270:5, 270:13, 271:4, 271:10, 271:15, 271:18, 276:2, 276:12, 276:14, 276:16, 276:20, 278:16, 278:18, 278:20, 279:1, 279:5, 279:7, 279:11, 279:15, 279:17, 279:18, 279:19, 279:21, 280:1, 280:3, 280:5, 280:8, 284:21, 285:12, 286:13, 286:17, 287:4, 288:3, 289:23, 290:3, 290:4, 290:8, 290:10, 290:13, 290:16, 290:18, 293:4, 293:11, 293:16, 294:2, 294:4, 294:15, 295:2, 296:9, 296:16, 299:2 MRI [1] - 109:18 MRO [10] - 129:3, 139:13, 139:15, 140:5, 140:15, 140:21, 141:11, 141:14, 142:1, 223:4 MS [6] - 34:5, 98:12, 190:14, 211:1, 254:18, 254:21 municipality [1] - 18:16 Mura [1] - 5:15 MURA [2] - 1:12, 2:8 mutual [2] - 29:6, 29:7</p>	<p>N N/DOT [1] - 85:19 name [62] - 5:14, 7:17, 8:8, 15:1, 15:4, 15:7, 15:11, 15:12, 15:14, 15:16, 15:23, 18:22, 19:18, 19:19, 21:23, 22:1, 22:2, 22:15, 24:22, 32:18, 40:10, 40:20, 50:23, 54:6, 54:21, 56:8, 59:16, 67:19, 67:23, 77:18, 78:8, 92:8, 94:21, 94:22, 108:22, 108:23, 110:15, 120:3, 121:11, 122:9, 134:3, 142:22, 142:23, 143:1, 147:10, 156:7, 162:19, 170:4, 170:6, 170:11, 184:5, 188:17, 192:5, 209:12, 213:17, 247:18, 251:23, 263:8, 300:18 named [7] - 25:11, 40:18, 50:19, 51:15, 101:11, 145:1, 184:4 names [4] - 15:3, 15:6, 138:23, 200:10 nationwide [1] - 239:18 natural [2] - 93:21, 256:14 nature [4] - 7:9, 76:17, 168:3, 222:9 Nava [1] - 50:23 near [4] - 120:3, 130:20, 131:1, 280:3 nearest [1] - 200:19 necessarily [1] - 164:2 need [10] - 33:20, 33:23, 34:14, 97:23, 98:1, 124:15, 189:20, 190:12, 205:18, 279:6 needed [4] - 125:22, 193:19, 194:1, 194:8 negative [12] - 88:20, 124:1, 197:17, 197:18, 198:5, 198:6, 198:8, 201:5, 201:11, 201:12, 201:14, 202:12 nerves [6] - 156:6, 156:13, 156:18, 156:21, 157:5, 157:8 never [24] - 19:19,</p>	<p>24:11, 24:14, 24:15, 24:16, 42:4, 53:5, 78:14, 90:17, 90:18, 107:13, 138:21, 138:22, 178:12, 196:16, 198:3, 200:9, 227:18, 229:16, 237:23, 242:21, 256:3, 256:16, 268:10 NEW [2] - 1:2, 300:1 new [12] - 107:12, 116:7, 168:17, 168:18, 180:19, 180:22, 181:2, 199:15, 199:16, 242:23, 252:14, 274:7 New [33] - 1:14, 2:5, 2:10, 2:15, 5:8, 8:16, 20:17, 27:6, 31:11, 32:15, 47:20, 48:1, 48:4, 48:6, 50:9, 51:5, 51:19, 71:13, 71:15, 72:12, 73:1, 109:1, 109:3, 109:4, 109:5, 129:21, 129:22, 156:9, 186:15, 209:17, 221:18, 300:6 news [5] - 25:22, 25:23, 26:1, 26:2, 273:13 next [14] - 7:5, 61:15, 80:18, 110:10, 118:20, 134:10, 139:10, 172:15, 175:18, 177:6, 195:19, 200:16, 200:18, 238:18 Niagara [1] - 2:4 Nicole [6] - 51:15, 52:2, 244:15, 244:16, 244:19, 245:2 night [2] - 114:3, 200:17 nighttime [1] - 159:3 nine [1] - 279:3 Noble [3] - 204:10, 204:19, 204:21 nobody [2] - 162:5, 247:15 Nolan [8] - 101:11, 101:15, 101:19, 128:6, 128:8, 129:5, 202:23, 203:4 non [6] - 85:21, 86:4, 272:2, 274:9, 274:17, 296:7</p>
---	--	--	--	---

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

<p>non-DOT [2] - 85:21, 86:4</p> <p>non-THC [4] - 272:2, 274:9, 274:17, 296:7</p> <p>nonprescription [5] - 7:9, 7:12, 9:18, 10:1, 113:4</p> <p>normal [1] - 197:23</p> <p>North [11] - 56:16, 107:10, 107:16, 108:4, 109:22, 109:23, 125:5, 170:21, 170:23, 171:2, 287:12</p> <p>north [1] - 131:23</p> <p>Notary [3] - 1:12, 300:5, 300:22</p> <p>notes [1] - 300:13</p> <p>nothing [2] - 249:2, 300:9</p> <p>notice [4] - 1:15, 45:20, 80:18, 300:10</p> <p>Notice [4] - 3:6, 5:2, 10:16, 11:4</p> <p>noticed [1] - 219:15</p> <p>notification [1] - 131:4</p> <p>notified [8] - 70:9, 71:3, 72:6, 128:3, 129:3, 130:18, 198:18, 199:7</p> <p>November [7] - 27:12, 27:13, 27:16, 27:22, 29:23, 179:2, 179:4</p> <p>Number [4] - 13:13, 48:10, 58:21, 233:5</p> <p>number [41] - 16:23, 17:10, 17:11, 17:15, 22:12, 34:19, 41:17, 53:19, 54:9, 54:10, 54:11, 54:12, 54:15, 69:10, 78:11, 78:12, 119:4, 119:6, 119:7, 127:3, 142:14, 144:16, 148:22, 149:8, 152:7, 182:8, 185:12, 215:10, 224:21, 224:22, 225:1, 225:8, 225:9, 241:1, 241:2, 241:3, 241:7, 241:10, 241:13, 241:17, 290:11</p> <p>numbered [3] - 101:5, 116:23, 183:15</p> <p>numbers [2] - 75:9, 188:1</p> <p>nurse [2] - 115:3, 115:22</p>	<p style="text-align: center;">O</p> <p>o'clock [3] - 98:16, 200:17, 276:20</p> <p>oakley [1] - 40:17</p> <p>oath [7] - 57:19, 144:2, 211:23, 250:10, 280:12, 298:19, 298:21</p> <p>obey [1] - 66:4</p> <p>object [46] - 28:23, 30:15, 43:1, 95:17, 95:23, 178:18, 220:13, 221:22, 233:17, 233:21, 234:2, 239:4, 239:6, 253:21, 255:15, 260:21, 262:16, 262:18, 263:11, 264:10, 264:14, 264:23, 265:15, 267:2, 267:15, 268:14, 270:1, 270:5, 271:4, 271:10, 271:15, 271:18, 276:2, 276:12, 276:14, 276:16, 284:21, 285:12, 286:17, 287:4, 293:4, 293:11, 293:16, 294:2, 294:4, 296:9</p> <p>objection [1] - 222:10</p> <p>observe [1] - 134:12</p> <p>obtained [1] - 79:9</p> <p>occasionally [2] - 31:5, 38:3</p> <p>occasions [1] - 90:10</p> <p>occur [2] - 59:13, 100:8</p> <p>occurred [3] - 104:1, 108:1, 196:20</p> <p>occurring [1] - 271:7</p> <p>October [23] - 12:14, 49:8, 50:2, 51:4, 63:21, 87:6, 114:1, 114:11, 125:20, 127:19, 130:2, 130:3, 130:4, 153:5, 157:10, 169:8, 169:11, 199:2, 199:5, 199:21, 200:12, 208:18, 283:12</p> <p>OF [3] - 1:2, 300:1, 300:3</p> <p>offer [2] - 96:9, 96:11</p> <p>offered [1] - 234:6</p> <p>offhand [1] - 16:18</p> <p>office [7] - 31:12,</p>	<p>114:16, 115:1, 163:20, 164:6, 197:5, 221:16</p> <p>officer [1] - 139:15</p> <p>offices [2] - 8:17, 32:16</p> <p>OFFICES [1] - 2:3</p> <p>often [1] - 96:2</p> <p>oftentimes [1] - 6:19</p> <p>Ohio [1] - 75:17</p> <p>OI [1] - 162:23</p> <p>oil [4] - 89:10, 89:11, 90:12, 97:18</p> <p>on-the-job [1] - 76:4</p> <p>once [8] - 71:2, 88:18, 88:19, 125:22, 158:16, 195:11, 216:8, 270:8</p> <p>one [84] - 9:8, 9:11, 14:3, 14:5, 23:19, 23:21, 24:2, 24:15, 24:21, 33:3, 33:4, 34:15, 37:11, 37:16, 38:4, 40:18, 40:19, 41:17, 58:3, 58:19, 61:12, 62:9, 65:1, 74:19, 88:2, 90:5, 99:6, 118:23, 119:4, 122:9, 136:22, 136:23, 138:10, 142:14, 148:3, 148:21, 150:16, 152:22, 163:4, 163:15, 163:16, 173:2, 180:22, 181:5, 189:9, 190:9, 191:21, 195:1, 198:13, 198:14, 198:15, 201:8, 201:12, 203:6, 204:17, 211:1, 213:2, 213:16, 218:6, 220:4, 221:20, 222:21, 227:20, 228:10, 243:6, 244:11, 244:12, 245:4, 246:9, 246:10, 247:23, 251:7, 257:10, 263:18, 266:12, 268:7, 268:9, 275:17, 299:1</p> <p>one's [1] - 223:14</p> <p>one-page [4] - 58:3, 61:12, 65:1, 246:10</p> <p>one-vehicle [1] - 99:6</p> <p>ones [1] - 137:12</p> <p>online [12] - 28:12, 90:23, 142:12, 147:9, 179:17,</p>	<p>235:21, 235:23, 248:23, 269:5, 272:12, 272:13, 272:17</p> <p>open [4] - 31:2, 190:14, 245:11, 266:20</p> <p>opened [5] - 228:17, 229:16, 243:16, 266:17, 267:9</p> <p>opening [1] - 267:22</p> <p>operate [3] - 73:3, 287:7, 293:2</p> <p>operated [1] - 72:23</p> <p>operating [4] - 58:23, 84:21, 133:2, 159:1</p> <p>operation [1] - 258:11</p> <p>operational [2] - 3:13, 61:4</p> <p>operators [2] - 293:22, 294:7</p> <p>opiates [1] - 260:4</p> <p>oppose [4] - 85:22, 107:12, 179:17, 244:11</p> <p>opposing [1] - 211:11</p> <p>option [4] - 45:21, 141:2, 141:6, 141:7</p> <p>orally [1] - 6:6</p> <p>Orange [1] - 20:1</p> <p>order [12] - 182:16, 244:11, 244:13, 244:16, 244:19, 244:22, 245:4, 246:13, 246:18, 246:21, 246:22, 246:23</p> <p>ordered [5] - 227:13, 244:8, 244:12, 247:1, 248:6</p> <p>Oregon [3] - 129:16, 129:18, 199:20</p> <p>organization [1] - 101:20</p> <p>orientation [4] - 52:22, 76:2, 77:5, 78:21</p> <p>Orientation [1] - 69:7</p> <p>original [3] - 210:12, 210:19, 255:20</p> <p>OTC [1] - 84:1</p> <p>otherwise [5] - 71:5, 88:22, 236:20, 280:2, 280:6</p> <p>outcome [1] - 300:16</p> <p>outfit [1] - 38:7</p> <p>outs [1] - 4:17</p> <p>outside [10] - 71:20, 136:16, 138:20, 242:6, 242:8,</p>	<p>242:10, 242:11, 242:13, 242:15, 242:20</p> <p>over-the-counter [5] - 33:13, 84:1, 84:19, 85:8, 193:10</p> <p>overdrawn [1] - 270:4</p> <p>overhearing [1] - 191:1</p> <p>oversight [2] - 234:9, 241:19</p> <p>owed [1] - 186:8</p> <p>Owego [2] - 50:8, 50:10</p> <p>own [21] - 36:10, 48:18, 49:2, 50:6, 69:17, 84:16, 85:22, 102:16, 129:14, 133:17, 142:5, 150:15, 150:17, 150:18, 168:12, 169:3, 198:19, 202:3, 232:2, 250:12</p> <p>owned [4] - 36:10, 48:14, 72:3, 72:22</p> <p>owner [1] - 94:19</p> <p>owner's [1] - 94:21</p> <p>owners [1] - 168:1</p> <p>owning [2] - 49:17, 49:18</p> <p style="text-align: center;">P</p> <p>P-I-A-N-I [1] - 29:10</p> <p>p.m [1] - 299:5</p> <p>package [5] - 34:23, 36:19, 94:7, 179:21, 229:1</p> <p>packages [1] - 167:9</p> <p>packaging [1] - 262:14</p> <p>packet [2] - 43:18, 94:3</p> <p>Packing [2] - 4:20, 270:11</p> <p>packing [1] - 270:18</p> <p>pad [3] - 52:9, 52:11, 52:12</p> <p>pad-type [1] - 52:9</p> <p>PAGE [2] - 3:1, 3:5</p> <p>page [93] - 44:7, 44:10, 44:17, 44:19, 44:21, 45:4, 45:23, 53:17, 53:23, 58:3, 61:12, 65:1, 68:18, 68:22, 75:8, 75:11, 76:9, 77:7, 77:9, 77:12, 77:19, 78:5, 78:6, 80:9, 80:14, 83:21, 85:11, 85:18,</p>
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170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

86:21, 86:22, 91:17, 91:21, 101:3, 101:8, 101:11, 103:11, 103:20, 104:6, 116:21, 117:4, 117:5, 123:12, 127:2, 145:22, 145:23, 147:18, 148:2, 148:16, 152:2, 152:3, 166:1, 166:2, 166:6, 166:7, 166:8, 166:12, 181:21, 181:23, 182:4, 183:15, 184:2, 188:21, 190:12, 191:5, 191:6, 203:17, 203:18, 206:15, 206:21, 217:10, 217:11, 217:14, 218:8, 218:11, 218:13, 224:14, 224:16, 226:2, 226:5, 233:2, 233:8, 233:9, 234:18, 238:4, 238:18, 240:23, 246:10, 255:18, 255:21, 255:22, 262:10, 270:17 pages [19] - 4:17, 12:5, 44:6, 75:4, 75:8, 83:4, 83:8, 101:3, 101:4, 101:7, 116:23, 144:16, 183:23, 203:16, 206:20, 219:12, 223:9, 246:8 paid [19] - 28:2, 35:5, 37:8, 95:2, 145:20, 161:6, 173:8, 173:9, 173:11, 173:13, 178:16, 180:9, 180:11, 180:14, 183:7, 185:8, 187:5, 187:7, 215:15 pain [32] - 108:13, 108:18, 110:22, 111:12, 111:17, 112:5, 114:6, 114:9, 114:14, 115:13, 115:17, 115:23, 156:13, 157:2, 161:13, 161:16, 163:6, 164:17, 165:20, 193:11, 195:8, 195:15, 195:20, 210:2, 249:12, 249:16, 265:4, 265:9, 265:17, 291:20,	292:16, 295:12 pain's [1] - 116:3 painting [1] - 23:6 pallet [2] - 38:3, 38:5 panel [2] - 143:2, 143:3 paper [7] - 28:13, 28:14, 179:14, 179:19, 225:8, 226:1, 235:19 papers [2] - 81:16, 197:23 paperwork [9] - 68:2, 89:18, 131:17, 135:9, 136:1, 136:4, 137:3, 170:15, 254:2 paragraph [6] - 62:10, 62:11, 62:16, 191:6, 192:10, 258:1 parenthesis [1] - 86:7 Park [2] - 19:16, 19:22 Parker [3] - 5:8, 48:4, 147:2 Parsippany [2] - 59:14, 76:3 part [15] - 26:20, 32:5, 65:17, 65:19, 70:7, 84:12, 86:10, 107:20, 117:13, 122:4, 122:12, 123:12, 150:9, 187:17, 241:2 partially [1] - 243:6 participate [1] - 87:19 participated [1] - 75:22 particular [11] - 90:20, 113:3, 138:4, 163:14, 163:15, 204:4, 206:9, 208:3, 226:15, 269:22, 271:5 particularly [1] - 163:21 partnership [1] - 167:23 Parts [1] - 258:5 parts [4] - 31:4, 35:14, 115:13, 257:18 party [1] - 300:15 pass [4] - 158:1, 184:22, 202:23, 287:2 passed [2] - 202:18, 203:3 passenger [1] - 129:23 Past [1] - 118:21 past [10] - 38:2, 46:2, 112:17, 120:6,	126:5, 126:6, 157:14, 278:17, 279:2, 279:4 pasted [1] - 224:18 patient [2] - 238:7, 238:9 pay [25] - 35:23, 37:11, 69:13, 69:17, 70:4, 70:7, 95:4, 141:4, 154:3, 161:4, 172:7, 173:8, 173:15, 178:5, 180:3, 183:5, 183:10, 183:11, 185:14, 186:14, 188:7, 188:15, 200:21, 214:10 paying [2] - 150:13, 214:11 payment [4] - 49:14, 182:21, 187:17, 187:19 payments [2] - 182:8, 186:7 pen [1] - 120:1 Penn [3] - 170:5, 170:8, 170:9 Pennsylvania [18] - 51:20, 71:21, 72:11, 109:2, 110:13, 110:14, 111:8, 130:19, 130:22, 198:23, 199:11, 199:12, 228:7, 228:14, 228:16, 228:19, 229:13, 231:14 pensions [1] - 166:13 people [11] - 24:4, 106:21, 133:21, 190:20, 190:22, 190:23, 249:16, 265:22, 293:2, 293:9, 293:15 people's [1] - 138:23 per [8] - 35:9, 36:1, 36:5, 36:6, 36:13, 94:11, 173:12, 180:14 percent [7] - 150:2, 173:13, 173:14, 187:20, 234:3, 239:10, 286:11 percentage [2] - 173:9, 173:11 Percocet [1] - 193:13 performance [1] - 84:9 perilously [1] - 222:1 period [11] - 63:2,	134:7, 154:17, 180:23, 181:3, 281:4, 284:17, 284:22, 289:18, 297:16, 297:18 periodic [1] - 105:9 periodically [1] - 112:18 person [25] - 28:9, 31:17, 54:16, 59:15, 59:18, 60:2, 60:11, 77:18, 77:21, 87:4, 90:20, 106:13, 106:16, 108:17, 123:22, 135:12, 136:12, 145:1, 149:7, 206:9, 230:1, 274:14, 274:18, 290:6 person-to-person [1] - 31:17 personal [2] - 84:16, 135:19 personally [2] - 204:17, 244:11 personnel [1] - 127:6 Personnel [5] - 4:2, 4:6, 89:2, 91:22, 126:20 perspective [2] - 43:4, 107:12 pertinent [1] - 123:15 pharmacy [1] - 163:14 Philadelphia [1] - 71:19 phone [43] - 16:21, 16:23, 17:10, 17:11, 17:14, 17:15, 18:1, 28:8, 34:19, 41:15, 42:2, 54:9, 54:10, 114:21, 130:6, 130:11, 130:14, 131:5, 132:1, 132:5, 132:14, 141:1, 142:12, 150:11, 150:13, 150:15, 150:16, 150:17, 150:19, 151:20, 180:19, 180:22, 199:23, 200:12, 241:1, 241:2, 241:3, 241:7, 241:10, 241:13, 241:17, 290:11 phones [2] - 150:22, 181:2 photocopies [4] - 138:3, 183:23, 212:4, 219:12 Photocopy [1] -	203:11 photocopy [6] - 44:6, 144:16, 184:3, 185:2, 189:1, 203:17 photograph [2] - 240:23, 267:5 photographed [1] - 224:6 photographs [6] - 63:13, 219:12, 223:20, 223:21, 223:22, 224:2 physical [11] - 45:10, 45:12, 69:13, 111:5, 111:6, 111:10, 122:5, 122:7, 122:11, 122:15, 164:12 physically [1] - 81:15 physicals [4] - 69:18, 125:1, 125:2, 125:3 physician [8] - 8:10, 8:13, 8:21, 63:19, 112:1, 121:16, 158:9, 162:16 Piani [5] - 29:8, 29:10, 29:11, 29:15, 29:17 pick [7] - 163:15, 168:8, 168:9, 168:12, 168:15, 168:20, 168:23 pick-up [6] - 168:8, 168:9, 168:12, 168:15, 168:20, 168:23 picked [1] - 199:18 picking [2] - 265:2, 265:7 pickup [2] - 99:10, 161:1 picture [8] - 224:15, 225:19, 233:2, 233:9, 234:18, 234:19, 262:4 pictures [2] - 4:18, 215:21 pieces [1] - 225:8 pile [2] - 10:14, 10:19 pill [3] - 9:8, 9:11, 246:20 pills [1] - 195:20 pilots [3] - 287:10, 293:7, 293:21 ping [1] - 223:4 Pittsburgh [3] - 71:20, 130:21, 199:18 place [20] - 37:6, 38:2, 41:12, 70:3, 71:8, 95:12, 131:1, 133:17, 134:3,
---	--	--	--	--

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

134:8, 142:22,
142:23, 143:1,
156:8, 163:23,
177:6, 209:9, 226:8,
255:17, 300:10
placed [1] - 227:1
places [7] - 40:4, 41:8,
42:3, 48:1, 48:3,
71:14, 145:19
PLAINTIFF [1] - 2:2
Plaintiffs [1] - 1:5
Plan [2] - 4:19, 254:13
plan [3] - 37:14, 37:15,
37:17
plant [6] - 235:3,
235:4, 238:22,
238:23, 239:1,
241:11
plaque [1] - 104:15
plastic [1] - 229:10
PLLC [3] - 1:13, 2:3,
2:8
point [48] - 14:4, 14:5,
19:6, 20:12, 21:9,
21:12, 51:7, 59:3,
59:7, 59:21, 62:23,
73:16, 81:7, 89:5,
91:3, 97:10, 99:2,
99:12, 120:10,
131:11, 131:21,
132:14, 135:10,
135:21, 146:9,
152:17, 154:7,
154:22, 155:15,
156:12, 157:17,
157:21, 158:14,
176:22, 183:5,
192:21, 193:16,
204:1, 208:1,
224:17, 228:17,
230:2, 231:10,
235:8, 237:12,
243:5, 243:9, 244:7
pointing [1] - 120:1
policies [8] - 41:21,
52:21, 65:22, 66:3,
67:6, 78:21, 78:23,
82:16
Policy [5] - 4:1, 82:22,
83:10, 83:16, 260:16
policy [26] - 41:18,
63:9, 64:7, 67:12,
69:14, 69:16, 70:7,
79:6, 79:8, 79:14,
79:16, 79:18, 81:1,
81:3, 81:14, 81:22,
82:1, 82:5, 82:13,
84:13, 85:21, 85:22,
86:11, 86:13, 127:14
portion [2] - 13:21,

218:14
Portland [1] - 199:20
position [14] - 29:1,
41:9, 58:13, 58:18,
89:7, 89:9, 89:12,
89:14, 89:16, 89:19,
89:22, 91:5, 91:8,
257:9
Position [3] - 3:11,
57:6, 58:5
positions [1] - 90:3
positive [27] - 113:23,
114:11, 115:7,
115:12, 120:23,
125:19, 126:3,
140:16, 142:15,
143:5, 157:9,
192:22, 196:9,
196:11, 196:12,
196:18, 196:23,
197:19, 198:4,
228:22, 243:5,
244:8, 246:16,
248:22, 249:5,
251:11, 251:14
possibility [1] -
142:18
possible [2] - 103:8,
194:11
possibly [6] - 143:5,
190:23, 298:2,
298:4, 298:8, 298:10
post [5] - 24:5, 24:23,
25:7, 25:17, 25:21
posted [4] - 24:15,
24:16, 25:2, 25:5
poster [1] - 26:2
posting [1] - 26:1
posts [1] - 25:14
pot [1] - 97:16
pouring [1] - 137:14
practice [1] - 84:16
practitioners [1] -
84:6
pre [4] - 93:8, 93:10,
161:9, 161:10
pre-approval [2] -
161:9, 161:10
pre-employment [2] -
93:8, 93:10
prednisone [6] -
112:13, 114:10,
155:14, 191:15,
191:16, 192:18
preference [1] - 98:15
preferred [1] - 174:15
prepare [4] - 11:19,
11:22, 56:23, 144:21
prepared [3] - 11:15,
54:23, 218:23

prescribe [4] - 115:1,
163:6, 164:12,
196:14
prescribed [13] - 8:4,
84:8, 84:18, 85:7,
111:12, 112:6,
113:11, 113:19,
113:20, 155:6,
193:13, 194:14,
238:14
prescribing [4] -
110:22, 111:17,
114:14, 195:21
Prescription [1] -
83:23
prescription [14] - 7:9,
7:12, 7:13, 7:15,
8:23, 9:15, 10:4,
63:16, 113:3,
114:20, 115:4,
155:10, 200:3,
285:20
prescriptions [3] -
114:17, 163:12,
163:19
presence [3] - 136:16,
136:17
present [4] - 9:14,
14:21, 63:17, 117:19
Present [3] - 117:6,
117:9, 117:14
PRESENT [1] - 2:17
presume [2] - 258:20,
280:19
pretty [23] - 20:11,
31:23, 39:19, 66:4,
67:7, 73:8, 76:2,
76:23, 84:23, 85:9,
90:8, 107:1, 129:6,
129:8, 151:1,
161:22, 173:10,
209:10, 216:11,
224:10, 275:22,
285:21, 289:10
preventable [1] -
103:4
preventative [1] -
102:23
preventible [4] -
102:6, 102:7,
102:10, 102:21
previous [3] - 73:14,
156:21, 167:8
previously [1] -
120:20
price [2] - 183:11,
215:12
primary [9] - 8:10,
8:12, 8:20, 108:17,
111:23, 112:1,

121:16, 158:9,
162:16
print [14] - 4:17, 117:9,
221:5, 235:18,
235:19, 236:6,
236:9, 236:15,
236:16, 236:18,
268:20, 283:3,
283:10, 283:16
print-outs [1] - 4:17
printed [1] - 236:9
printer [1] - 235:17
privilege [4] - 222:2,
222:3, 222:4, 236:21
problem [9] - 81:7,
112:23, 113:20,
116:7, 125:11,
156:22, 222:13,
266:5
problems [4] - 107:23,
108:6, 108:11,
235:17
procedure [12] -
19:17, 79:14, 81:2,
81:4, 81:15, 81:22,
82:1, 82:5, 84:21,
133:2, 156:11, 159:2
procedures [7] -
58:23, 65:23, 66:3,
67:6, 78:23, 82:14,
82:17
process [6] - 134:18,
145:6, 155:23,
156:2, 156:8, 188:16
produce [1] - 205:12
produced [6] - 12:3,
12:8, 235:15,
235:16, 246:6, 274:1
product [99] - 11:9,
12:11, 13:20, 33:13,
63:20, 64:1, 85:8,
87:7, 114:7, 114:8,
116:12, 223:21,
224:6, 227:13,
227:15, 227:18,
229:10, 230:12,
230:15, 230:19,
231:9, 231:13,
232:5, 232:11,
233:11, 233:15,
234:1, 234:5, 235:2,
235:9, 235:11,
235:12, 236:3,
237:2, 237:5, 237:9,
237:12, 237:15,
237:18, 237:20,
238:6, 238:11,
238:14, 238:16,
238:17, 239:2,
239:13, 241:8,

241:15, 241:18,
241:23, 243:19,
243:20, 243:21,
244:9, 244:23,
245:7, 247:16,
248:6, 248:17,
248:20, 248:23,
249:4, 249:12,
249:17, 261:18,
261:19, 264:20,
265:5, 265:10,
265:18, 266:6,
266:13, 266:15,
268:3, 268:4,
268:18, 270:7,
273:5, 282:6,
283:19, 284:3,
284:15, 284:18,
285:6, 285:10,
286:3, 286:14,
287:16, 288:8,
288:18, 289:3,
289:20, 292:10,
292:15, 294:8,
294:11, 295:4,
295:16
production [1] - 222:7
Products [6] - 3:23,
4:19, 82:21, 254:13,
256:7, 256:10
products [25] - 31:4,
84:1, 219:5, 232:9,
232:14, 232:17,
246:14, 246:18,
246:21, 247:4,
247:14, 247:22,
248:4, 282:13,
282:14, 284:6,
287:22, 288:1,
291:15, 296:21,
297:1, 297:17,
297:22, 298:6,
298:16
profit [1] - 38:23
program [4] - 106:13,
118:13, 140:8, 200:5
prohibited [4] - 66:21,
85:13, 85:14, 260:17
promoting [2] -
239:16, 289:15
prompted [1] - 282:17
pronounced [1] -
214:9
proof [1] - 229:2
property [3] - 48:9,
186:14, 186:15
Protonix [3] - 125:13,
125:17, 125:20
provide [8] - 38:10,
38:12, 87:18, 97:21,

130:18, 134:9, 135:5, 249:16 provided [12] - 61:22, 103:11, 126:2, 128:20, 133:9, 138:16, 139:5, 144:11, 180:2, 180:5, 198:22, 238:11 provides [1] - 36:8 provisions [1] - 258:8 PTO [1] - 127:15 Public [3] - 1:12, 300:5, 300:22 pull [1] - 38:5 pulled [2] - 249:10, 269:18 purchase [22] - 49:4, 168:9, 170:3, 170:16, 182:16, 204:9, 204:11, 205:3, 205:8, 212:19, 213:4, 230:21, 249:12, 269:7, 269:8, 269:10, 271:7, 271:14, 282:18, 283:14, 292:10, 292:15 purchased [28] - 63:20, 73:17, 168:11, 168:17, 180:19, 204:6, 204:7, 204:13, 206:1, 206:6, 209:21, 210:7, 212:11, 212:15, 216:8, 230:19, 264:7, 270:22, 271:3, 272:19, 277:7, 281:7, 281:15, 284:2, 284:16, 289:19, 295:17 purchasing [5] - 205:5, 268:17, 269:1, 269:3, 289:3 purpose [3] - 11:6, 33:5, 111:3 purposely [1] - 225:17 pursuant [2] - 1:15, 300:10 push [1] - 179:18 put [24] - 33:17, 41:21, 52:8, 55:6, 59:11, 59:15, 74:19, 97:7, 97:14, 98:9, 151:11, 153:17, 175:4, 186:21, 187:3, 187:19, 189:15,	211:7, 220:14, 220:15, 244:19, 245:18, 254:16, 256:23 putting [3] - 66:21, 134:12, 138:18 Q quarters [1] - 35:9 Quest [1] - 32:18 questioning [4] - 5:21, 251:19, 276:22, 278:23 questions [17] - 30:18, 41:6, 97:20, 103:11, 105:23, 106:2, 130:16, 167:2, 185:1, 194:23, 226:3, 249:9, 249:23, 251:18, 265:21, 267:18, 296:19 quick [2] - 143:2, 185:1 quit [4] - 174:20, 174:23, 176:11, 176:18 quite [4] - 17:21, 187:23, 209:16, 220:9 quote [1] - 282:7 R radio [4] - 239:16, 239:19, 248:12, 248:13 raises [1] - 251:19 Ram [3] - 168:16, 169:3, 182:16 ramifications [1] - 194:11 ran [1] - 106:13 Rand [2] - 1:13, 2:9 random [29] - 41:19, 69:20, 69:21, 70:12, 88:13, 112:18, 128:4, 128:23, 132:9, 138:12, 139:14, 140:12, 140:13, 141:15, 194:12, 198:18, 199:8, 200:16, 203:1, 203:2, 203:3, 204:13, 204:16, 209:4, 209:6, 225:12, 234:13, 236:12, 239:5 randomly [1] - 220:11	rate [8] - 35:8, 35:10, 35:16, 35:22, 36:3, 88:8, 115:22, 173:10 rather [2] - 6:7, 245:22 rays [2] - 162:5, 164:10 reach [2] - 290:5, 290:12 reaction [2] - 202:21, 231:5 read [30] - 14:1, 14:3, 64:6, 79:5, 194:21, 195:3, 202:3, 206:20, 212:20, 217:2, 217:6, 217:21, 217:23, 218:2, 232:19, 233:4, 235:10, 236:2, 258:9, 268:10, 268:13, 272:1, 282:14, 286:7, 286:9, 288:7, 291:21, 294:20, 294:23, 296:6 reading [10] - 62:5, 212:17, 213:1, 213:3, 215:22, 217:3, 218:4, 288:21, 288:23, 289:1 ready [1] - 133:6 real [2] - 186:14, 189:2 really [15] - 11:21, 12:6, 38:6, 83:20, 120:17, 124:15, 144:5, 161:22, 163:15, 165:4, 189:7, 209:2, 249:1, 249:6, 267:17 reason [15] - 22:10, 82:12, 89:21, 102:19, 103:2, 103:6, 118:14, 124:10, 128:20, 185:20, 205:15, 220:21, 256:2, 269:22, 271:5 reasons [1] - 214:9 receipt [10] - 3:15, 3:18, 3:21, 64:14, 65:21, 69:6, 80:4, 81:21, 205:5, 269:18 Receipt [2] - 65:6, 68:13 receipts [2] - 145:13, 145:16 receive [10] - 35:1, 35:21, 36:13, 37:5, 37:12, 95:11, 105:12, 127:22,	153:20, 248:19 received [8] - 77:15, 78:20, 79:5, 82:13, 152:11, 153:22, 153:23, 182:13 receiving [1] - 182:9 recently [2] - 12:1, 18:4 recertification [5] - 81:5, 81:18, 106:10, 106:11, 106:12 recertified [1] - 107:8 Recess [6] - 57:9, 98:22, 143:11, 211:16, 250:6, 279:9 recipes [3] - 218:17, 218:20, 219:1 recognize [5] - 54:10, 54:14, 77:18, 92:13, 184:6 recollection [4] - 94:6, 103:12, 126:1, 218:4 recommend [2] - 91:5, 206:11 recommending [2] - 164:16, 165:19 recommended [3] - 111:5, 216:2, 237:20 record [45] - 13:14, 17:6, 44:6, 53:17, 57:12, 58:3, 61:11, 65:1, 68:17, 80:9, 83:3, 91:16, 101:2, 103:8, 104:15, 116:21, 127:2, 130:11, 137:4, 143:23, 144:15, 148:20, 152:20, 159:12, 159:14, 185:2, 188:22, 190:2, 190:4, 203:16, 208:22, 211:9, 211:22, 212:3, 212:8, 215:4, 215:6, 223:19, 243:12, 250:9, 279:11, 279:20, 280:9, 280:10, 296:19 Record [3] - 195:3, 286:9, 294:23 record's [1] - 210:18 recording [2] - 159:7, 159:12 records [14] - 30:5, 55:21, 93:22, 94:2, 102:16, 102:17, 150:6, 152:21, 167:5, 185:3, 185:4, 219:20, 221:1,	298:20 RED [2] - 1:7, 2:7 Red [5] - 5:18, 272:1, 272:9, 275:2, 276:9 Reddy [8] - 59:16, 59:17, 60:8, 60:11, 60:14, 60:17, 82:9, 82:10 redepose [1] - 205:18 REEVES [1] - 2:13 refer [4] - 30:6, 67:10, 121:13, 195:17 reference [13] - 54:5, 62:15, 67:8, 75:12, 84:3, 91:10, 104:5, 148:12, 149:20, 166:4, 234:20, 238:4, 296:4 referenced [4] - 263:7, 264:8, 264:15, 264:16 references [1] - 75:8 referred [3] - 55:16, 67:13, 295:6 referring [3] - 94:18, 206:15, 276:1 refers [1] - 184:20 refinery [1] - 256:12 reflect [5] - 152:7, 166:18, 167:6, 182:8, 185:14 reflects [2] - 144:18, 189:18 refresh [1] - 30:6 refreshes [1] - 44:1 refrigeration [1] - 31:4 refuse [2] - 87:14, 196:14 regarding [6] - 63:20, 76:18, 102:17, 127:12, 285:15, 295:16 region [1] - 115:20 regional [2] - 31:8, 101:18 regs [4] - 284:5, 284:20, 285:7, 285:11 regular [4] - 125:2, 158:17, 193:18, 194:6 regularly [3] - 155:21, 156:1, 196:7 regulation [4] - 67:13, 67:15, 286:4, 286:16 regulations [10] - 253:18, 254:3, 254:6, 258:12, 259:11, 261:12, 283:20, 287:17,
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170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

<p>292:11, 292:17 Regulations [1] - 257:14 regulatory [2] - 234:9, 241:19 reimbursed [1] - 245:6 reimbursement [1] - 149:5 Relafen [4] - 191:18, 191:19, 192:3, 192:5 relate [2] - 254:7, 258:10 related [9] - 11:16, 56:4, 93:22, 94:2, 152:21, 185:3, 221:1, 251:18, 300:15 Relco [1] - 46:22 release [1] - 59:12 relief [5] - 157:2, 157:4, 226:9, 249:12, 249:16 relievers [1] - 193:11 remainder [2] - 242:21, 243:23 remains [1] - 241:23 remarried [1] - 23:2 remember [45] - 17:1, 54:22, 67:12, 67:15, 82:7, 90:20, 94:22, 108:22, 108:23, 121:11, 122:9, 130:15, 138:23, 147:10, 157:23, 163:14, 165:12, 165:13, 165:21, 170:4, 177:10, 187:19, 200:23, 205:10, 208:8, 209:12, 213:5, 213:8, 220:22, 231:11, 231:17, 235:16, 240:5, 240:7, 247:17, 255:3, 256:5, 256:6, 256:17, 284:12, 289:17, 293:19, 297:15, 297:21, 298:7 remind [3] - 57:14, 57:18, 144:1 renewed [1] - 105:18 renting [3] - 48:12, 49:17, 146:18 repeat [1] - 158:22 rephrase [1] - 11:7 reply [1] - 74:12 report [16] - 56:11, 56:13, 56:19, 56:21, 57:2, 84:5, 102:13,</p>	<p>103:19, 103:21, 119:21, 121:20, 197:21, 246:2, 246:4, 246:6, 246:10 Reportable [2] - 4:3, 100:18 reported [6] - 100:5, 100:9, 100:13, 102:20, 103:2, 139:22 Reporter [2] - 252:4, 286:6 reporter [4] - 195:3, 286:9, 294:20, 294:23 reporting [6] - 118:3, 120:6, 273:15, 273:17, 273:18, 273:21 reports [2] - 56:22, 144:22 reposted [1] - 26:4 represent [4] - 5:16, 5:18, 252:1 representations [1] - 295:16 representative [3] - 87:3, 87:8, 87:11 request [1] - 127:7 Request [5] - 4:2, 4:6, 89:2, 91:22, 126:20 requesting [1] - 114:21 required [4] - 45:13, 86:18, 138:10, 174:12 requirement [1] - 58:18 requirements [4] - 79:9, 253:19, 257:9, 261:12 requiring [1] - 11:5 research [11] - 26:4, 64:3, 237:7, 248:23, 249:1, 249:4, 249:6, 251:11, 251:13, 272:9, 289:2 researched [1] - 288:18 reserve [3] - 205:18, 251:17, 290:14 reserves [1] - 86:16 reside [2] - 15:21, 16:15 residence [1] - 51:22 resident [1] - 21:7 residing [1] - 51:13 resignation [3] - 96:18, 97:5, 97:7 resigned [3] - 96:8,</p>	<p>175:15, 175:23 resigning [2] - 96:5, 175:9 resolve [1] - 118:8 respect [6] - 84:13, 84:17, 86:11, 90:22, 96:17, 144:7 respective [1] - 189:5 response [4] - 11:4, 12:8, 90:17, 90:18 responsibility [1] - 63:15 responsible [1] - 67:4 rest [1] - 160:11 restrictions [1] - 154:23 result [12] - 41:12, 88:19, 93:13, 139:12, 141:15, 141:19, 141:22, 161:20, 197:11, 197:15, 202:10, 246:12 results [9] - 40:1, 56:5, 113:5, 139:21, 140:22, 201:6, 202:3, 202:13, 234:54 retain [1] - 210:8 retested [1] - 141:5 retire [1] - 60:23 retired [2] - 60:20, 60:21 retirement [5] - 37:15, 37:17, 166:20, 186:17, 189:16 return [11] - 57:18, 144:18, 146:3, 147:21, 149:20, 151:5, 153:9, 153:10, 167:9, 186:11, 188:19 returns [14] - 144:13, 145:2, 145:6, 145:8, 146:7, 146:10, 148:21, 153:8, 166:1, 170:21, 181:20, 184:1, 185:22, 186:4 review [11] - 11:22, 54:2, 62:2, 84:4, 84:22, 139:15, 215:19, 218:20, 219:4, 234:4, 273:21 reviewed [2] - 12:2, 12:7 reviewing [1] - 84:17 RGB [1] - 40:16 right-hand [17] - 44:13, 53:18, 58:8, 65:2, 68:19, 75:7,</p>	<p>80:11, 83:5, 83:9, 85:17, 86:21, 91:18, 92:1, 117:1, 127:3, 127:7, 215:6 ring [2] - 153:14, 184:11 risk [1] - 63:17 risks [4] - 237:1, 237:4, 237:7, 241:14 Rite [1] - 163:17 Road [5] - 5:8, 48:4, 48:10, 48:12, 147:2 road [14] - 12:5, 31:2, 32:1, 99:12, 99:22, 105:5, 105:6, 105:7, 149:7, 151:9, 158:1, 171:22, 229:22, 230:5 rollover [3] - 166:4, 166:11, 166:15 room [8] - 5:20, 14:21, 105:21, 134:15, 135:22, 138:17, 147:16 roughly [2] - 48:22, 51:14 route [3] - 36:2, 160:22, 161:5 routes [2] - 157:14, 158:17 routine [1] - 81:9 row [1] - 160:11 Rs [1] - 40:17 rule [2] - 67:14, 67:15 rules [9] - 5:22, 65:22, 66:3, 67:6, 76:18, 76:20, 254:3, 254:6, 280:11 run [5] - 6:16, 56:13, 105:5, 105:6, 228:6 RV [2] - 171:5 RVs [7] - 167:18, 168:4, 168:7, 172:11, 172:15, 182:10, 182:14</p>	<p>67:6, 77:4, 77:22, 101:12, 104:7, 104:23, 128:2, 128:5, 130:7, 130:13, 234:10, 241:20 Safety [1] - 66:7 salaries [2] - 152:4, 152:8 sale [2] - 170:16, 282:13 sales [2] - 148:19, 183:11 sample [15] - 70:14, 70:16, 70:18, 70:21, 72:1, 126:3, 133:9, 139:5, 140:14, 142:4, 197:7, 200:1, 200:14, 225:12, 236:13 samples [3] - 133:15, 133:16, 202:5 sand [1] - 93:21 sat [1] - 129:22 SAT [1] - 200:4 satellite [1] - 159:10 satellites [1] - 151:22 SAV [1] - 246:19 saved [1] - 42:23 savings [9] - 37:15, 37:17, 166:20, 182:18, 186:17, 187:3, 187:9, 187:11, 189:16 saw [27] - 65:11, 109:8, 112:4, 114:18, 115:10, 122:9, 162:18, 163:1, 163:5, 195:11, 196:8, 196:10, 196:21, 216:18, 230:22, 239:14, 248:14, 256:16, 260:8, 260:9, 264:16, 264:21, 271:13, 277:6, 277:13, 277:15, 281:20 Sayre [2] - 110:13, 111:8 scale [1] - 115:23 scattered [1] - 221:3 Schedule [2] - 147:21, 149:19 scheduled [1] - 107:3 School [2] - 18:15, 19:22 school [9] - 15:16, 18:14, 18:23, 19:1, 19:8, 19:11, 19:13,</p>
--	--	---	---	--

S

S&S [8] - 171:13, 171:15, 171:16, 171:20, 171:23, 172:4, 172:9, 172:18
S-T-R-U-B-L-E [1] - 93:3
safe [2] - 84:9, 261:10
safekeeping [2] - 220:16, 220:17
safely [1] - 283:19
safety [16] - 58:23, 63:17, 65:22, 66:2,

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

19:14, 46:12 scratch [1] - 285:3 screen [1] - 45:11 screens [3] - 45:13, 283:10, 283:16 screenshot [1] - 291:7 screenshots [1] - 283:3 scripts [1] - 246:20 seal [8] - 136:9, 136:10, 136:14, 136:15, 137:2, 137:23, 229:9, 300:18 sealed [3] - 229:4, 229:5, 229:10 seals [2] - 136:12, 136:13 search [2] - 39:19, 272:15 searched [1] - 273:5 SEC [1] - 189:11 second [29] - 45:23, 63:14, 86:20, 103:11, 141:3, 141:9, 141:16, 141:22, 142:2, 142:4, 145:22, 152:2, 166:1, 166:7, 166:12, 188:21, 203:4, 203:18, 219:23, 224:14, 224:16, 226:2, 226:5, 233:8, 244:19, 245:2, 245:9, 284:13 seconds [2] - 278:19, 279:2 secretary [2] - 54:20, 67:23 Section [1] - 189:18 section [5] - 58:18, 127:12, 148:6, 234:19, 236:23 sections [1] - 66:13 Security [1] - 22:12 security [1] - 174:12 see [95] - 13:23, 20:9, 33:7, 41:21, 44:2, 44:14, 46:3, 54:7, 56:21, 56:22, 58:18, 59:1, 62:10, 62:13, 63:13, 65:2, 67:19, 69:10, 75:8, 76:8, 83:21, 84:3, 84:10, 85:10, 86:4, 86:9, 86:23, 87:5, 91:19, 91:22, 92:3, 92:6, 101:1, 101:8, 104:5, 110:19, 112:2,	114:16, 115:6, 117:6, 117:17, 118:20, 119:23, 123:12, 127:4, 127:9, 127:17, 146:1, 148:12, 148:14, 148:16, 181:21, 183:14, 184:7, 184:10, 189:4, 189:8, 191:11, 207:4, 210:16, 226:4, 226:9, 233:10, 234:7, 236:22, 238:4, 238:19, 248:6, 248:10, 255:6, 255:8, 255:17, 255:18, 255:20, 255:22, 256:20, 257:1, 257:8, 257:10, 257:14, 257:18, 257:21, 258:1, 258:6, 263:7, 268:18, 269:2, 270:19, 271:12, 272:16, 277:18, 277:21, 289:16, 295:10, 299:2 seeds [2] - 297:10, 298:8 seeing [9] - 111:3, 114:15, 255:3, 256:6, 257:5, 266:9, 278:18, 279:1, 282:17 sees [1] - 115:3 selected [1] - 70:12 sell [4] - 169:5, 169:7, 169:9, 169:17 semi [3] - 171:6, 171:8, 225:6 send [6] - 223:6, 236:18, 236:19, 243:1, 247:14, 247:16 sense [1] - 70:8 sent [17] - 28:21, 54:17, 68:1, 140:21, 179:15, 197:7, 198:14, 202:14, 202:15, 202:16, 236:19, 245:10, 245:15, 245:16, 245:18, 245:20, 245:21 sentence [1] - 63:14 separate [4] - 60:6, 136:23, 202:5, 211:10	September [10] - 4:21, 156:4, 239:23, 240:1, 266:19, 269:11, 269:12, 269:13, 269:14, 270:11 Sequoia [2] - 18:15, 19:13 series [1] - 267:18 service [2] - 151:17, 151:20 Services [1] - 40:16 services [1] - 55:3 set [6] - 81:16, 142:4, 142:6, 167:5, 265:20, 300:10 sets [1] - 202:7 seven [5] - 252:8, 279:15, 279:22, 280:4, 280:7 several [7] - 108:12, 125:18, 213:18, 213:19, 213:20, 250:20, 250:21 Seybold [1] - 156:7 shampoo [2] - 297:7, 298:11 Shana [2] - 87:4, 87:7 share [3] - 10:20, 216:15, 216:21 sharing [1] - 38:23 sharp [1] - 161:18 sheet [1] - 161:3 sheets [3] - 131:18, 159:23, 160:4 shipping [1] - 13:5 shoot [1] - 239:16 shopping [3] - 163:16, 163:22, 164:1 short [4] - 10:6, 10:9, 81:19, 250:2 short-term [2] - 10:6, 10:9 shorthand [1] - 300:13 shot [1] - 110:4 shoulder [28] - 6:7, 107:22, 114:6, 115:14, 115:15, 115:16, 156:16, 161:15, 161:17, 161:21, 162:1, 162:9, 162:14, 162:15, 162:17, 163:2, 164:10, 164:13, 164:17, 164:22, 165:5, 165:6, 165:20, 195:9, 196:3, 196:5, 249:13, 268:5	show [10] - 58:2, 122:2, 144:14, 152:19, 204:15, 216:12, 222:16, 222:23, 223:2, 279:23 showed [1] - 56:19 showing [22] - 10:11, 10:22, 13:12, 43:11, 53:15, 61:8, 64:23, 68:16, 75:1, 80:7, 83:2, 91:15, 100:21, 116:19, 126:23, 167:3, 181:17, 183:21, 188:22, 203:14, 212:1, 223:17 shown [2] - 184:13, 222:18 shows [2] - 170:20, 233:2 shrugs [1] - 6:8 shut [1] - 8:2 shy [1] - 154:10 side [6] - 99:14, 99:17, 219:17, 224:14, 224:15, 242:15 sign [13] - 24:12, 78:15, 81:20, 96:17, 107:7, 135:9, 136:7, 136:9, 137:2, 137:21, 160:8 signature [24] - 44:20, 44:21, 45:4, 53:22, 58:11, 59:19, 61:13, 61:15, 61:19, 64:9, 65:8, 65:21, 69:5, 77:8, 77:19, 78:6, 78:8, 80:14, 80:16, 80:19, 82:8, 255:17, 255:22, 255:23 Signature [1] - 44:20 signed [23] - 24:11, 28:15, 45:9, 45:17, 54:3, 54:23, 58:15, 59:3, 59:18, 61:23, 62:3, 63:1, 64:5, 67:19, 69:3, 77:11, 77:19, 78:18, 80:23, 101:11, 106:14, 179:14, 258:23 signifying [1] - 58:14 signing [6] - 37:2, 65:14, 95:6, 95:9, 95:11, 95:15 similar [3] - 13:4, 106:4, 285:15 simple [1] - 6:18 simultaneously [2] - 283:6, 283:7	single [7] - 47:7, 48:23, 53:17, 68:18, 80:9, 91:17, 127:2 single-family [1] - 48:23 single-page [2] - 53:17, 68:18 sit [4] - 64:21, 181:10, 184:19, 251:1 sites [1] - 25:10 sitting [2] - 231:1, 267:6 situation [3] - 33:18, 146:22, 247:19 situations [1] - 42:12 six [7] - 18:10, 52:7, 119:20, 174:8, 174:18, 175:4, 290:13 sixth [2] - 62:10, 62:11 skid [3] - 52:9, 52:11, 52:12 skills [1] - 52:15 skimmed [2] - 215:20, 218:3 skimming [1] - 216:5 slab [1] - 52:13 sleep [2] - 114:9, 287:1 sleeping [1] - 114:4 slid [1] - 105:7 slip [1] - 270:18 Slip [2] - 4:20, 270:11 small [2] - 117:9, 153:12 smart [3] - 150:22, 263:6, 263:9 smartphone [3] - 181:9, 181:12, 250:14 Smith [8] - 105:13, 105:19, 106:6, 110:16, 110:19, 110:22, 111:2, 111:4 smoke [1] - 253:11 Snyder [1] - 40:15 Social [1] - 22:12 social [1] - 25:10 sold [7] - 169:14, 169:19, 183:7, 183:8, 183:9, 238:7, 291:15 solely [1] - 238:6 solicitation [1] - 248:19 solicitors [1] - 248:16 solo [2] - 47:8, 52:7 someone [10] - 253:12, 253:14, 253:15, 273:14,
--	--	--	--	--

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

<p>273:15, 273:17, 273:18, 273:21, 275:10, 283:18 someplace [1] - 273:1 sometime [3] - 121:7, 266:18, 269:10 sometimes [7] - 157:4, 158:23, 159:1, 163:17, 270:2, 270:3 somewhat [3] - 28:6, 28:7, 107:11 somewhere [3] - 109:4, 109:15, 133:4 soon [5] - 112:1, 112:3, 196:22, 197:1, 202:18 sophisticated [1] - 202:1 sorry [6] - 83:16, 117:8, 154:8, 179:5, 205:17, 240:16 sort [2] - 81:6, 271:17 south [1] - 131:23 space [1] - 146:18 special [2] - 108:16, 108:19 specialist [1] - 238:23 specific [13] - 13:21, 31:20, 43:19, 67:12, 67:13, 67:15, 128:20, 134:17, 208:14, 239:22, 258:14, 276:8 specifically [3] - 42:20, 43:8, 78:22 specimen [10] - 134:9, 135:13, 135:19, 135:22, 136:6, 136:10, 138:5, 138:18, 141:3, 242:23 specimens [1] - 141:3 spell [9] - 7:22, 8:8, 18:18, 26:13, 27:7, 29:9, 93:2, 162:21, 192:3 spend [1] - 118:11 spent [1] - 70:5 spicy [1] - 125:23 spinal [2] - 117:22, 119:8 spine [1] - 119:8 split [1] - 36:6 spoken [6] - 17:23, 18:2, 18:5, 22:20, 60:21, 78:2 spot [2] - 143:8, 174:18 spots [1] - 151:16</p>	<p>Square [2] - 1:13, 2:9 ss [1] - 300:2 stabbing [1] - 161:18 stamp [1] - 291:11 standard [4] - 38:14, 84:21, 133:2, 159:1 standards [2] - 59:1, 59:5 stands [3] - 26:15, 139:15, 233:13 stapled [6] - 75:4, 83:4, 101:3, 203:16, 223:20, 223:23 Starbucks [1] - 272:23 start [29] - 5:21, 6:22, 7:1, 7:5, 27:11, 43:9, 46:7, 47:4, 92:23, 96:4, 107:21, 134:23, 135:2, 154:7, 155:3, 155:22, 156:2, 158:2, 167:11, 167:13, 179:2, 179:4, 188:3, 188:7, 198:21, 199:5, 217:14, 222:11 started [27] - 18:11, 25:13, 29:23, 31:7, 32:11, 35:17, 37:2, 44:2, 46:13, 47:1, 47:7, 47:8, 60:7, 95:12, 129:17, 152:16, 154:19, 155:7, 155:18, 155:23, 157:19, 158:16, 168:13, 172:14, 173:23, 178:1, 194:12 starters [1] - 144:15 starting [2] - 26:7, 35:16 starts [2] - 101:4, 148:6 state [6] - 141:13, 144:19, 148:18, 170:20, 207:18, 209:10 STATE [1] - 300:1 State [11] - 20:17, 48:5, 50:9, 51:5, 51:19, 109:1, 130:22, 156:9, 209:17, 221:18, 300:6 statement [4] - 79:10, 234:17, 285:21, 294:13 Statement [5] - 3:10, 53:12, 148:12, 148:13, 148:15</p>	<p>statements [3] - 205:12, 205:13, 205:19 States [1] - 168:6 states [2] - 63:14, 117:21 STATES [1] - 1:1 stating [1] - 13:20 stayed [1] - 145:19 stenosis [2] - 117:23, 119:8 step [1] - 195:19 steroid [1] - 191:17 sticking [1] - 233:8 still [29] - 15:19, 16:7, 16:13, 21:20, 48:18, 60:17, 64:20, 74:9, 85:18, 98:19, 114:2, 114:10, 118:8, 120:21, 125:15, 146:11, 161:13, 169:3, 170:15, 174:5, 179:10, 187:11, 210:10, 225:1, 229:13, 250:23, 280:12, 298:19, 298:20 stop [7] - 132:19, 149:15, 173:18, 174:13, 228:15, 228:18 stopped [5] - 13:3, 33:8, 53:5, 181:14, 193:17 stopping [1] - 278:21 stops [1] - 38:5 store [1] - 160:9 stored [3] - 17:8, 229:18, 242:4 Storm [1] - 5:15 STORM [2] - 1:12, 2:8 straight [1] - 209:8 streen [1] - 45:11 Street [1] - 2:4 street [1] - 51:2 strength [1] - 164:19 stressed [2] - 274:10, 274:12 strictly [1] - 214:8 Struble [17] - 93:1, 93:4, 93:7, 93:11, 93:14, 93:16, 93:18, 93:23, 94:4, 94:8, 94:18, 94:19, 94:22, 94:23, 96:4, 97:10, 97:15 stuff [5] - 38:3, 213:3, 249:11, 270:3 style [1] - 275:20 Subchapter [1] -</p>	<p>258:5 subject [4] - 13:3, 234:13, 239:5, 293:9 submit [2] - 87:14, 89:18 submitted [4] - 43:2, 90:9, 90:13, 236:7 subpoena [1] - 12:8 subscribed [1] - 300:18 subscriber [1] - 204:1 substance [13] - 77:13, 77:15, 84:7, 85:14, 140:8, 258:10, 277:23, 278:7, 281:22, 282:2, 282:21, 285:17, 291:13 substances [5] - 66:20, 67:3, 85:13, 86:6, 285:19 Sue [1] - 2:17 suffered [2] - 153:16, 161:14 suffering [1] - 125:6 suggest [2] - 280:1, 280:5 suggested [2] - 74:19, 207:21 suggestions [1] - 165:19 sum [2] - 185:7, 291:13 summarize [1] - 145:15 Summary [4] - 4:1, 82:22, 83:10, 83:17 summer [2] - 161:11, 162:11 Summer [2] - 163:1, 195:12 sunglasses [1] - 38:21 SUNY [1] - 164:6 super [2] - 26:9, 211:13 supervisor [7] - 18:9, 34:7, 73:14, 82:10, 91:2, 91:3, 103:19 supervisor's [1] - 103:21 supplement [4] - 239:9, 291:17, 293:1, 293:20 supplements [1] - 293:21 supplied [4] - 199:10, 199:22, 201:13, 202:14 supply [1] - 200:13</p>	<p>suppose [1] - 298:17 supposed [2] - 67:17, 290:6 surgeon [1] - 195:17 surgeries [1] - 124:22 sweetened [1] - 97:16 Swift [1] - 40:14 sworn [5] - 5:9, 6:12, 57:15, 57:16, 300:9 symptoms [3] - 121:20, 121:22, 121:23 synthetic [2] - 86:7, 200:7 System [2] - 105:13, 105:19 system [7] - 105:20, 133:11, 142:17, 143:7, 198:11, 200:2, 250:15 Systems [1] - 46:22</p>
T				
<p>T-U-L-A-R-E [1] - 18:19 table [7] - 207:3, 219:16, 219:17, 224:9, 224:11, 266:22, 267:6 talks [1] - 148:18 tall [1] - 136:19 tamper [1] - 229:2 tampered [1] - 229:2 tasks [1] - 249:11 tasted [3] - 227:19, 227:20, 232:16 tattoo [1] - 124:9 tattoos [2] - 123:21, 124:5 tax [35] - 144:13, 144:18, 144:21, 145:2, 145:6, 145:7, 146:1, 146:3, 146:7, 147:21, 148:21, 149:10, 149:17, 152:21, 152:22, 153:8, 153:9, 153:10, 167:6, 167:7, 170:20, 172:16, 181:19, 181:20, 183:19, 184:1, 185:3, 185:4, 185:5, 185:22, 186:3, 186:11, 188:19, 214:9 taxes [8] - 148:19, 149:15, 150:5, 186:7, 186:14, 186:15, 187:5, 187:7</p>				

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

<p>taxing ^[1] - 186:4</p> <p>teach ^[1] - 52:20</p> <p>team ^[8] - 32:9, 154:20, 157:12, 171:9, 173:20, 174:10, 176:16, 177:21</p> <p>telephone ^[1] - 41:16</p> <p>television ^[1] - 248:8</p> <p>tenants ^[1] - 162:4</p> <p>tenor ^[1] - 275:21</p> <p>term ^[4] - 10:6, 10:8, 10:9</p> <p>terminal ^[30] - 59:21, 60:1, 60:6, 60:8, 70:11, 71:14, 72:2, 72:3, 72:8, 72:22, 72:23, 73:4, 73:17, 74:16, 107:5, 128:14, 129:11, 129:12, 131:2, 131:10, 131:16, 132:1, 132:3, 132:4, 159:23, 160:1, 160:5, 177:18, 202:22, 228:13</p> <p>terminals ^[2] - 72:15, 73:9</p> <p>terminated ^[18] - 33:12, 40:3, 45:19, 49:11, 50:1, 51:4, 73:19, 88:22, 127:19, 127:23, 128:12, 128:16, 128:21, 155:20, 167:12, 180:18, 186:19, 225:6</p> <p>termination ^[5] - 79:17, 92:2, 92:21, 127:9, 153:4</p> <p>terms ^[7] - 132:15, 133:5, 148:15, 151:8, 167:23, 207:11, 253:18</p> <p>test ^[92] - 32:1, 32:12, 32:14, 33:17, 43:6, 56:5, 69:22, 69:23, 70:5, 70:10, 71:17, 72:10, 82:2, 86:16, 87:14, 88:7, 88:19, 93:6, 93:8, 93:10, 93:13, 112:17, 113:5, 113:23, 115:8, 115:12, 120:23, 121:1, 121:14, 122:3, 122:4, 125:19, 130:16, 130:18, 131:8, 132:9, 132:20, 132:23,</p>	<p>133:5, 133:12, 134:4, 139:10, 139:21, 140:1, 140:2, 140:5, 140:12, 140:13, 140:14, 140:22, 141:9, 141:15, 141:16, 141:22, 142:5, 142:11, 142:14, 143:2, 143:3, 158:1, 192:22, 197:2, 197:3, 197:11, 197:16, 197:22, 198:1, 198:4, 198:9, 198:12, 198:17, 198:22, 198:23, 199:10, 199:22, 200:19, 201:5, 201:7, 201:12, 201:18, 201:19, 201:20, 202:3, 202:4, 202:11, 203:4, 204:15, 233:19, 246:11, 252:18, 260:2, 287:2</p> <p>tested ^[38] - 32:22, 71:5, 88:2, 88:4, 114:11, 120:16, 120:19, 120:20, 121:21, 122:3, 123:20, 124:1, 126:3, 132:7, 140:16, 142:5, 142:15, 142:16, 196:9, 196:11, 196:12, 196:18, 196:23, 198:19, 233:11, 237:11, 243:1, 243:4, 244:1, 244:4, 244:8, 246:16, 247:3, 247:9, 248:22, 249:5, 251:11, 251:14</p> <p>testified ^[3] - 5:10, 193:16, 250:11</p> <p>testify ^[3] - 8:2, 144:7, 300:9</p> <p>testifying ^[1] - 212:9</p> <p>testimony ^[18] - 6:12, 11:15, 30:10, 57:16, 57:20, 239:7, 239:11, 239:14, 252:14, 256:15, 280:17, 280:21, 298:22, 300:8, 300:9, 300:10, 300:11, 300:12</p> <p>testing ^[28] - 66:17,</p>	<p>69:13, 70:7, 88:10, 88:13, 88:15, 112:18, 112:23, 113:17, 113:21, 138:7, 138:11, 139:1, 143:5, 157:9, 157:21, 194:12, 223:7, 233:23, 234:4, 242:22, 247:14, 254:7, 260:3, 286:3, 286:15, 292:11, 293:9</p> <p>tests ^[24] - 40:1, 52:15, 69:20, 71:11, 72:5, 72:6, 72:12, 87:18, 124:13, 124:15, 124:17, 124:20, 133:16, 142:19, 200:20, 200:21, 201:15, 201:17, 202:7, 202:13, 219:5, 233:16, 234:14, 239:5</p> <p>Texas ^[23] - 3:19, 72:13, 72:18, 89:10, 128:15, 198:13, 199:6, 199:9, 199:18, 201:13, 201:17, 201:22, 202:8, 202:14, 204:10, 204:11, 204:15, 204:19, 204:20, 209:5, 209:9, 212:11</p> <p>text ^[1] - 131:5</p> <p>THC ^[49] - 67:1, 140:16, 142:15, 142:17, 143:6, 198:10, 200:2, 234:3, 237:13, 239:10, 243:5, 244:2, 244:5, 244:8, 246:11, 253:2, 253:3, 253:4, 253:13, 253:16, 259:7, 259:8, 260:12, 260:14, 260:17, 261:1, 261:2, 261:5, 261:7, 261:10, 263:1, 272:2, 274:9, 274:17, 278:9, 278:10, 282:7, 282:20, 283:21, 284:4, 284:19, 285:6, 285:10, 286:11, 286:21, 292:1, 296:7, 296:12, 296:13</p>	<p>THE ^[11] - 2:2, 2:6, 2:11, 7:20, 17:4, 17:7, 22:9, 43:21, 98:13, 98:17, 286:11</p> <p>theft ^[2] - 20:8, 20:10</p> <p>therapy ^[4] - 111:5, 111:6, 111:10, 164:12</p> <p>thereafter ^[1] - 300:11</p> <p>thereof ^[1] - 300:16</p> <p>thicker ^[1] - 167:8</p> <p>thinking ^[2] - 51:9, 197:13</p> <p>third ^[9] - 77:7, 103:20, 104:6, 147:18, 184:2, 201:8, 233:2, 234:18, 240:23</p> <p>Third ^[1] - 2:14</p> <p>thousand ^[1] - 12:5</p> <p>three ^[32] - 26:14, 35:9, 42:1, 48:2, 48:3, 58:19, 62:9, 115:9, 115:11, 119:1, 119:7, 147:1, 154:10, 161:12, 162:11, 164:3, 172:5, 172:6, 175:22, 176:14, 176:18, 177:11, 181:2, 181:5, 181:8, 201:16, 220:8, 220:11, 223:19, 223:22, 288:21</p> <p>Three ^[2] - 4:17, 219:12</p> <p>Three-pages ^[1] - 219:12</p> <p>three-year ^[1] - 42:1</p> <p>threshold ^[1] - 86:17</p> <p>throughout ^[2] - 63:2, 86:14</p> <p>throw ^[1] - 225:17</p> <p>thrown ^[2] - 188:1, 220:19</p> <p>timeline ^[4] - 269:6, 277:5, 277:7, 281:13</p> <p>tips ^[2] - 152:5, 152:8</p> <p>title ^[2] - 59:21, 263:9</p> <p>Title ^[1] - 257:13</p> <p>titled ^[1] - 263:22</p> <p>today ^[28] - 15:21, 34:7, 48:18, 48:23, 49:6, 49:22, 50:5, 50:21, 51:17, 56:7, 56:8, 64:21, 68:8, 116:3, 118:9, 125:15, 169:3, 180:18, 181:9, 184:19, 187:11,</p>	<p>210:10, 214:6, 214:20, 241:23, 248:4, 250:23, 251:1</p> <p>today's ^[12] - 13:13, 53:16, 68:17, 75:2, 80:8, 91:16, 100:22, 116:20, 127:1, 167:4, 181:18, 203:15</p> <p>together ^[17] - 32:8, 75:5, 83:4, 101:3, 141:12, 148:2, 151:12, 154:19, 176:16, 192:9, 203:16, 205:1, 205:2, 212:14, 223:20, 223:23, 260:22</p> <p>tolerance ^[2] - 259:16, 259:20</p> <p>TOMMANEY ^[1] - 2:4</p> <p>Tommaney ^[1] - 14:21</p> <p>tomorrow ^[8] - 252:7, 252:9, 279:13, 280:7, 290:15, 296:18, 298:19, 299:3</p> <p>tone ^[1] - 275:21</p> <p>tongue ^[2] - 226:8, 227:2</p> <p>tonight ^[1] - 236:16</p> <p>tons ^[1] - 66:8</p> <p>took ^[43] - 9:1, 10:5, 11:9, 12:12, 60:9, 63:21, 74:2, 85:7, 87:6, 107:6, 113:4, 125:21, 126:2, 169:1, 191:10, 191:14, 191:20, 191:22, 192:11, 192:12, 193:1, 193:2, 193:7, 224:2, 227:7, 227:10, 231:2, 231:4, 231:12, 232:20, 233:15, 234:1, 234:5, 234:15, 235:12, 239:2, 241:7, 242:21, 249:3, 259:1, 259:8, 263:2, 297:9</p> <p>top ^[17] - 10:19, 40:10, 41:2, 54:5, 58:4, 62:8, 68:22, 75:11, 85:17, 91:21, 119:22, 218:7, 218:10, 218:13, 226:19, 226:22, 262:1</p> <p>torn ^[3] - 162:4, 229:8</p>
---	--	---	---	---

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

<p>total [3] - 139:3, 148:22, 185:7</p> <p>totally [1] - 98:12</p> <p>touch [1] - 116:8</p> <p>tow [1] - 168:20</p> <p>toward [2] - 119:22, 127:11</p> <p>towards [2] - 148:15, 170:9</p> <p>towed [1] - 100:12</p> <p>tower [1] - 151:15</p> <p>tracked [1] - 152:1</p> <p>tracking [1] - 159:10</p> <p>trailer [1] - 132:6</p> <p>train [4] - 47:9, 52:6, 52:10, 52:16</p> <p>trained [2] - 52:19, 59:7</p> <p>trainer [3] - 47:9, 52:4, 76:5</p> <p>Training [3] - 3:19, 72:19, 75:13</p> <p>training [27] - 52:5, 52:9, 59:11, 59:13, 59:15, 65:17, 75:14, 75:18, 75:22, 76:1, 76:4, 76:6, 76:15, 76:17, 77:3, 77:13, 77:16, 79:3, 81:9, 105:10, 105:12, 106:4, 106:6, 106:13, 106:17, 106:21, 164:19</p> <p>transaction [1] - 169:16</p> <p>transcribed [1] - 300:11</p> <p>transcription [1] - 300:13</p> <p>translate [1] - 243:12</p> <p>Transport [20] - 40:13, 40:16, 40:19, 46:19, 46:21, 47:1, 47:5, 152:16, 167:10, 167:14, 167:16, 167:23, 171:13, 171:20, 172:4, 172:9, 172:18, 181:21, 182:13, 188:4</p> <p>transport [3] - 13:2, 168:7, 172:15</p> <p>Transportation [16] - 3:11, 3:17, 3:19, 26:19, 57:6, 58:5, 58:22, 68:12, 68:23, 72:18, 75:13, 79:14, 171:14, 175:17, 256:9, 257:17</p> <p>transporting [9] -</p>	<p>31:3, 35:11, 35:13, 167:18, 168:4, 168:10, 172:11, 182:9, 182:14</p> <p>travel [3] - 36:16, 36:17, 145:15</p> <p>treat [2] - 162:16, 210:1</p> <p>treated [12] - 10:8, 108:13, 108:18, 109:13, 109:15, 110:11, 119:11, 119:13, 119:18, 123:2, 126:8, 126:9</p> <p>treatment [3] - 165:10, 195:20, 208:2</p> <p>treatments [1] - 120:11</p> <p>Tri [1] - 109:4</p> <p>Tri-Cities [1] - 109:4</p> <p>Trial [3] - 1:10, 3:6, 5:2</p> <p>tried [6] - 227:19, 227:20, 231:9, 231:11, 270:8, 290:5</p> <p>Trimac [1] - 40:15</p> <p>trip [2] - 99:20, 161:3</p> <p>Tripp [7] - 239:7, 289:13, 291:23, 292:6, 292:8, 292:9, 292:14</p> <p>trips [1] - 161:3</p> <p>trouble [4] - 62:5, 81:6, 114:4, 148:13</p> <p>truck [48] - 30:21, 36:10, 46:8, 46:11, 46:14, 52:14, 66:14, 95:8, 99:9, 99:10, 100:1, 105:5, 129:13, 129:20, 129:22, 131:13, 132:13, 132:16, 132:23, 138:20, 150:19, 151:22, 159:6, 171:9, 182:16, 182:21, 183:5, 183:7, 183:8, 183:9, 183:10, 183:11, 183:12, 183:18, 187:16, 194:19, 225:4, 225:5, 228:15, 228:18, 231:2, 231:13, 258:11, 287:15, 292:9, 292:14, 294:10, 295:3</p> <p>trucker [4] - 76:22, 112:14, 122:13, 133:19</p>	<p>trucking [5] - 39:18, 97:11, 97:15, 171:4, 177:4</p> <p>trucks [7] - 36:8, 37:19, 37:21, 100:8, 151:11, 151:18, 151:19</p> <p>true [8] - 26:1, 26:3, 26:5, 45:6, 57:20, 79:10, 264:6, 300:12</p> <p>truth [3] - 300:9, 300:10</p> <p>try [16] - 96:12, 98:16, 103:8, 133:8, 133:11, 164:21, 165:5, 165:7, 230:23, 252:10, 265:4, 265:9, 266:6, 266:13, 268:4, 290:12</p> <p>trying [6] - 91:7, 230:15, 259:5, 261:17, 280:1, 280:5</p> <p>Tuesday [1] - 141:23</p> <p>Tulare [3] - 18:17, 19:22</p> <p>turn [4] - 131:19, 133:16, 159:22, 190:7</p> <p>turned [6] - 90:16, 131:16, 150:7, 160:4, 219:21, 298:15</p> <p>turning [2] - 77:7, 78:5</p> <p>twice [3] - 21:17, 90:9, 163:5</p> <p>Twitter [3] - 24:8, 24:10, 24:15</p> <p>two [76] - 5:16, 9:16, 26:20, 32:8, 35:23, 36:2, 36:13, 38:4, 40:17, 58:19, 60:6, 62:9, 63:13, 70:6, 70:22, 71:4, 71:9, 83:4, 83:8, 90:9, 102:11, 106:10, 108:21, 115:9, 115:10, 116:21, 117:4, 117:22, 117:23, 118:18, 118:23, 119:6, 120:20, 125:22, 128:22, 129:20, 131:13, 136:19, 136:21, 137:9, 137:14, 137:21, 141:3, 142:19, 154:19, 167:8, 174:10, 175:8, 177:14, 184:23,</p>	<p>194:23, 195:1, 199:7, 199:21, 201:11, 201:15, 201:17, 202:5, 202:7, 203:16, 210:21, 210:22, 225:8, 229:22, 240:12, 240:14, 240:19, 240:20, 253:8, 270:17, 272:22, 273:4, 282:20</p> <p>two-page [2] - 117:4, 270:17</p> <p>Tylenol [2] - 193:3, 193:5</p> <p>type [6] - 52:9, 105:16, 145:21, 193:11, 255:3, 268:4</p> <p>typed [1] - 166:15</p> <p>types [2] - 90:7, 119:1</p> <p>typewriting [1] - 300:12</p>	<p>37:19, 37:21, 38:1, 38:6, 52:11</p> <p>unnecessary [1] - 197:12</p> <p>unopened [2] - 242:23, 245:17</p> <p>unreimbursed [2] - 148:9, 148:21</p> <p>unrelated [1] - 211:10</p> <p>unscrewed [2] - 226:19, 229:7</p> <p>untreated [1] - 120:10</p> <p>up [64] - 8:2, 24:11, 24:12, 33:22, 34:20, 35:19, 41:5, 41:6, 52:14, 56:19, 62:20, 75:3, 79:17, 85:17, 98:6, 98:12, 99:22, 103:10, 119:23, 120:3, 122:2, 128:17, 129:1, 129:2, 129:4, 129:15, 134:19, 134:20, 136:23, 137:7, 142:6, 142:11, 142:13, 152:16, 161:23, 168:8, 168:9, 168:12, 168:15, 168:20, 168:23, 170:4, 170:9, 172:13, 175:9, 175:14, 176:2, 176:21, 178:6, 192:21, 199:18, 223:23, 242:9, 247:20, 256:4, 265:2, 265:8, 266:17, 267:9, 267:23, 269:18, 272:8, 276:21, 298:18</p> <p>upload [1] - 55:23</p> <p>upper [7] - 44:7, 44:13, 83:8, 92:1, 127:7, 181:22, 182:1</p> <p>urine [37] - 70:16, 70:20, 71:11, 126:2, 130:16, 130:18, 133:9, 133:15, 133:16, 134:9, 134:13, 134:23, 135:5, 135:13, 135:19, 135:22, 137:13, 138:16, 138:18, 139:5, 139:10, 140:5, 140:14, 140:15, 197:7, 198:1, 198:22, 199:10,</p>
---	--	--	--	---

U

U.S. [5] - 40:14, 146:4, 245:20, 248:20, 257:17

unannounced [1] - 88:15

unauthorized [2] - 3:13, 61:4

unclear [1] - 120:22

uncontrollable [1] - 105:8

under [17] - 19:4, 24:2, 57:19, 105:12, 144:2, 161:8, 183:3, 211:23, 227:2, 250:10, 263:23, 280:12, 286:12, 292:4, 294:18, 298:19, 298:20

understood [6] - 45:15, 79:20, 85:6, 261:10, 285:22, 285:23

unemployment [1] - 176:4

uniform [2] - 38:8, 38:14

Union [3] - 48:6, 48:8, 49:16

United [1] - 168:5

UNITED [1] - 1:1

unless [2] - 140:7, 200:2

unlike [1] - 75:2

unloading [6] - 36:4,

199:22, 200:14, 201:13, 202:5, 202:7, 202:13, 209:7, 209:8, 209:11 USA [1] - 215:13 usage [1] - 226:15 username [3] - 23:17, 24:1, 24:19 uses [1] - 262:14 utilized [1] - 160:16	286:15, 292:17 Visa [3] - 213:7, 213:10, 213:13 visa [1] - 213:11 Visas [1] - 213:21 visions [1] - 214:17 Visions [2] - 214:18, 215:2 visit [4] - 110:9, 116:1, 163:4 visits [2] - 115:11, 163:7 vitamins [4] - 9:20, 10:2, 234:15, 234:16 vs [1] - 1:6	watching [2] - 240:8, 240:11 water [7] - 33:14, 33:19, 34:2, 42:7, 42:8, 132:18, 132:22 ways [1] - 209:16 wear [1] - 38:7 website [24] - 249:8, 271:19, 277:19, 277:20, 277:21, 281:1, 281:17, 282:10, 282:17, 283:4, 285:4, 285:5, 286:1, 286:20, 286:23, 287:6, 288:16, 289:2, 289:8, 291:21, 295:7, 295:8, 295:10, 295:22 Wednesday [1] - 76:13 week [6] - 37:11, 76:11, 118:12, 196:10, 224:5, 269:20 week's [1] - 201:9 weekend [1] - 129:4 weeks [12] - 111:11, 125:22, 172:5, 172:6, 175:4, 175:8, 176:14, 176:18, 227:12, 228:1, 228:3, 228:4 WENDY [1] - 2:14 west [3] - 131:23, 132:3, 132:4 WESTERN [1] - 1:2 wet [2] - 52:13 wheel [1] - 168:16 WHEREOF [1] - 300:18 whole [10] - 14:1, 30:10, 77:5, 238:22, 241:11, 266:2, 285:2, 300:9 Whole [2] - 239:17, 291:18 wife [17] - 21:9, 21:20, 32:7, 122:21, 167:7, 167:13, 189:2, 212:13, 265:23, 270:22, 271:3, 281:7, 281:15, 296:20, 297:2, 298:22 wife's [2] - 8:20, 54:6 wifi [2] - 151:18, 151:19 willing [1] - 120:11 Willingboro [4] - 27:6,	31:11, 32:15 winter [1] - 38:15 wiped [1] - 251:6 Wisconsin [1] - 52:8 withdrew [1] - 92:20 witness [1] - 300:8 WITNESS [10] - 3:1, 7:20, 17:4, 17:7, 22:9, 43:21, 98:13, 98:17, 286:11, 300:18 wondering [1] - 149:8 word [5] - 14:3, 166:15, 262:10, 262:15 words [9] - 6:7, 62:13, 71:8, 81:15, 114:19, 115:3, 119:23, 169:17, 286:21 Worker's [1] - 116:16 Workers' [11] - 4:5, 110:20, 153:20, 153:23, 154:5, 158:6, 158:10, 158:11, 158:12, 158:14, 193:8 Workman's [2] - 110:12, 112:4 works [4] - 51:11, 68:8, 139:17, 149:11 world [3] - 266:2, 287:11 worried [1] - 279:22 worry [4] - 287:6, 287:11, 287:16, 292:16 worse [1] - 195:15 wreck [11] - 107:13, 128:18, 153:1, 153:17, 154:8, 155:4, 161:20, 165:15, 192:21, 193:5, 193:14 write [4] - 78:8, 114:19, 145:18, 225:22 writing [3] - 55:6, 140:22, 273:14 written [7] - 74:12, 81:23, 127:22, 131:20, 197:21, 246:4, 246:6 wrote [4] - 103:16, 217:19, 274:14, 274:18	164:10 Xpress [1] - 40:14				
V								
vacation [3] - 37:8, 92:18, 180:11 vacations [1] - 118:11 Valley [9] - 175:19, 175:20, 175:21, 176:1, 176:6, 176:13, 177:1, 177:9, 178:17 Vancouver [1] - 177:20 various [3] - 31:4, 41:8, 152:21 vary [1] - 35:10 Vaught [2] - 87:4, 87:7 vehicle [3] - 99:6, 159:10, 191:9 Vensure [7] - 178:9, 178:11, 178:12, 178:13, 184:4, 184:7, 184:14 VENSURE [2] - 178:11, 184:7 verbally [1] - 96:20 Verizon [1] - 40:22 Vestal [4] - 8:16, 8:18, 163:13, 163:19 via [1] - 233:11 video [21] - 81:18, 81:19, 107:2, 240:8, 240:20, 250:11, 260:9, 289:5, 289:7, 289:11, 289:12, 289:16, 290:21, 290:22, 291:5, 291:7, 291:9, 291:14, 291:23, 292:7, 295:6 videos [4] - 76:18, 105:21, 105:22, 260:11 violate [3] - 284:19, 285:7, 286:3 violation [12] - 79:18, 127:13, 160:7, 160:10, 259:11, 261:11, 283:20, 284:4, 285:11,	W							
W-2 [6] - 94:23, 145:10, 184:14, 184:16, 188:19, 189:1 W-2s [4] - 145:11, 184:3, 189:5 W-I-L-L-I-N-G-B-O-R- O [1] - 27:8 wages [5] - 152:4, 152:8, 184:14, 185:5, 185:7 Wagner [6] - 31:10, 32:6, 33:1, 33:6, 34:8, 34:9 Wagner's [1] - 34:19 wait [5] - 6:22, 7:3, 36:4, 36:12, 134:7 waited [1] - 138:20 waiting [1] - 142:3 waived [1] - 222:5 waiver [1] - 222:10 waiving [1] - 236:20 wall [6] - 242:6, 242:7, 242:8, 242:10, 242:11, 242:13 Walla [2] - 21:4 wallet [1] - 214:5 wants [1] - 100:23 warned [1] - 241:18 warning [3] - 84:4, 84:17, 84:20 Washington [3] - 21:4, 21:5, 177:20 watch [9] - 24:23, 77:1, 105:21, 105:22, 107:2, 135:12, 137:1, 291:1, 291:3 watched [4] - 81:19, 81:20, 240:20, 290:22 watches [1] - 126:11								
X								
X's [1] - 282:11 X-rays [2] - 162:5,								
Y								
Yan [3] - 170:5, 170:8, 170:9 yard [1] - 131:8 year [32] - 15:9, 17:23, 42:1, 46:16, 51:12, 74:4, 80:19, 88:2, 94:23, 119:14, 121:1, 121:3, 121:5, 124:2, 124:6, 132:11, 145:11, 146:1, 146:7, 149:5, 152:22, 153:1, 167:7, 167:12, 172:16, 177:17, 181:19, 185:3, 185:5, 239:18 yearly [1] - 122:5 years [44] - 8:14, 18:10, 22:18, 24:13, 29:13, 30:2, 30:3, 30:8, 41:23, 46:1, 46:3, 47:17, 48:22, 51:23, 53:2, 53:7, 60:9, 61:1, 63:11, 79:23, 88:1, 106:11, 119:19, 119:20, 120:20, 124:7, 124:10, 124:14, 124:16, 124:18, 124:20, 124:22, 125:18, 126:14, 185:22, 186:6, 186:8, 186:12, 220:9, 242:4, 284:10, 296:21 years' [1] - 167:8 YORK [2] - 1:2, 300:1 York [24] - 1:14, 2:5, 2:10, 2:15, 5:8, 8:16, 20:17, 47:20, 48:1, 48:4, 48:7, 50:9, 51:5, 51:19, 109:1, 109:3, 109:4, 109:5, 156:9, 186:15, 209:17, 221:18, 300:6 youngest [1] - 50:13 yourself [13] - 13:21, 57:19, 134:15, 137:17, 138:14, 142:6, 152:8, 167:20, 188:4, 189:1, 221:7, 226:12, 247:7 YouTube [24] - 24:17,								

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24:19, 24:21, 24:23,
25:1, 25:2, 25:5,
25:8, 64:3, 239:8,
239:15, 240:4,
240:8, 240:20,
250:11, 289:5,
289:6, 289:11,
290:21, 291:5,
291:9, 291:13,
291:23

Z

zero [7] - 234:3,
239:10, 259:16,
259:20, 286:11,
286:21, 292:1

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3 -----
4 **DOUGLAS J. HORN and CINDY HARP-HORN,**

5 Plaintiffs,

6 -vs- Civil Action No.: 15-cv-701-FPG

7 **MEDICAL MARIJUANA, INC., DIXIE ELIXIRS AND**
8 **EDIBLES, RED DICE HOLDINGS, LLC, and DIXIE**
9 **BOTANICALS,**

Defendants.
10 -----

Continuation of Examination Before
11 Trial of **DOUGLAS J. HORN**, held before Marissa
12 A. Ashcroft, Notary Public, at MURA & STORM,
13 PLLC, 930 Rand Building, 14 Lafayette Square,
14 Buffalo, New York, on May 9th, 2017 at 10:00
15 a.m., pursuant to notice.
16
17
18
19
20
21
22
23

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A P P E A R A N C E S

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EDIBLES and DIXIE BOTANICALS:

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ALSO PRESENT: Cindy Sue Harp-Horn

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1		<u>W I T N E S S E S</u>	
2	WITNESS	EXAMINATION	PAGE
3	Douglas J. Horn	By Mr. Mazzola	304
4		By Mr. Boron	346
5		<u>E X H I B I T S</u>	
6	EXHIBIT	DESCRIPTION	PAGE
7	Exhibit 28	Motor Vehicle Crash Worksheet	318
8	Exhibit 29	E-mail dated 11/23/12	345
9	Exhibit 30	Mike Choi, M.D. Doctor Review	345
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

D O U G L A S J. H O R N

195 Parker Road Lockwood, New York 14859,
having been first duly sworn, was examined and
testified as follows:

EXAMINATION BY MR. MAZZOLA:

Q. Okay. Good morning, Mr. Horn. We're going to
finish up from where we were yesterday. Just
to recap, I think we were talking yesterday
about independent research you did regarding
the Dixie Elixir product before you purchased
it and used it in October 2012; do you recall
that?

A. Yes.

Q. Okay. And the last thing you were talking
about was watching a YouTube video which Tripp
Keber was talking; do you recall that?

A. Yeah.

Q. Okay. What I was trying to understand
yesterday before we went on the break was
what -- or I guess the first thing is who
observed that video with you?

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—DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17—

1 A. Me and Cindy.

2 Q. Okay. And do you recall precisely when you
3 watched that video?

4 A. No.

5 Q. Okay. You just know it was before you
6 purchased and used the product; is that
7 correct?

8 A. Correct.

9 Q. Other than you and Cindy, did you show that
10 video to anyone else?

11 A. No.

12 Q. Did anyone witness you and Cindy watching that
13 video before you purchased and used the
14 product?

15 A. No.

16 Q. Did you make a copy of that video?

17 A. No.

18 Q. Did you make a date stamp or screenshot of
19 that video?

20 A. No.

21 Q. What evidence or proof could you offer that
22 you observed that video before you purchased
23 and used the Dixie Elixir product?

—DEPAOLO-CROSBY REPORTING SERVICES, INC.—

DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 A. Just that the video's still there. I mean --

2 Q. I guess what I'm asking is: What could you
3 offer to someone to prove that you observed it
4 when you said you observed it?

5 A. I don't know.

6 Q. Okay. Other than your testimony?

7 A. Yeah.

8 Q. Is your -- do you still have the computer that
9 you watched it on?

10 A. I'm not sure what computer I watched it on.

11 Q. Okay. Why do you say that? How many
12 computers do you have?

13 A. Quite a few and a couple of iPads as well.

14 Q. Okay. Okay. Do you still have all those
15 iPads and computers?

16 A. Yeah, I believe so.

17 Q. So if I could look at all of those iPads and
18 computers and find the one that you watched
19 that video on, would I be able to find some
20 date on the computer proving when you watched
21 that video?

22 A. I'm not sure if you could or not.

23 Q. Okay. But you still have the computers?

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 A. I do.

2 Q. Okay. We were talking also before we went on
3 the break about hemp products that you've
4 used?

5 A. Correct?

6 Q. Do you recall that?

7 A. Yes.

8 Q. You said that you've taken hemp seed or hemp
9 heart?

10 A. Yeah, it's basically in a shake is what it
11 was.

12 Q. Okay. Is there a difference between hemp seed
13 and hemp heart?

14 A. I don't know.

15 Q. Okay. You said you've used hemp milk; is that
16 correct?

17 A. Correct.

18 Q. And hemp shampoo; is that correct?

19 A. Correct.

20 Q. Any other hemp-based products?

21 A. Not that I can think of, no.

22 Q. Did you use those products in, say, the -- the
23 month preceding your drug test?

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 A. No.

2 Q. When was the last time you used those products
3 before the drug test?

4 A. Probably about a year before I got fired.

5 Q. So a year before the drug test?

6 A. Yeah, at least.

7 Q. What prompted you to use those hemp products?

8 A. We used the hemp shake for weight loss.

9 Q. Okay. And what about the hemp milk?

10 A. That was used in the shake.

11 Q. Okay. And what about the hemp shampoo?

12 A. That was just something we tried one time.

13 Q. Okay. How did you learn about these hemp
14 products?

15 A. They were in the grocery store.

16 Q. What prompted you to buy them?

17 A. Try something different.

18 Q. Did you do any research before you used them?

19 A. I didn't.

20 Q. Did your wife do any research before you used
21 them?

22 A. I believe she did, yes.

23 Q. After you dropped dirty I understand your wife

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 provided a sample to, I believe it was MEDTOX;
2 is that correct?

3 A. I'm not sure.

4 Q. Okay. But when you went to that laboratory in
5 Texas?

6 A. Correct.

7 Q. I think it might have been Dumas, Texas?

8 A. Yeah, I think so.

9 Q. Your wife gave a sample there; is that
10 correct?

11 A. Yes.

12 Q. Why did your wife give a sample?

13 A. To see if she had THC in her system.

14 Q. But what would prompt her to do that?

15 A. Because I had THC and I had no idea where it
16 came from.

17 Q. Did you have any idea where it came from?

18 A. No, I did not.

19 Q. Your wife did use the Dixie Elixir product; is
20 that correct?

21 A. She tried it once.

22 Q. When you used the Dixie Elixir product for the
23 first time did you have any sort of reaction

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 to it?

2 A. No.

3 Q. Did you feel high?

4 A. No.

5 Q. Did you feel any sort of euphoria or anything
6 like that?

7 A. No.

8 Q. What did you feel?

9 A. I didn't feel anything.

10 Q. Okay. You testified earlier that you used
11 marijuana when you were a kid; is that
12 correct?

13 A. No.

14 Q. I think you testified earlier that when you
15 were 15 you used marijuana?

16 A. No.

17 Q. We didn't ask you that question?

18 A. No.

19 Q. Okay. Have you ever used marijuana?

20 A. When I was younger.

21 Q. Okay. In the -- say, a year preceding your
22 drug test did you ever use any marijuana?

23 A. No.

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 Q. Okay. In the year preceding your drug test
2 did you ever ingest any marijuana products?

3 A. No.

4 Q. Nothing for a year?

5 A. Nope.

6 Q. Okay. And have you ever been convicted of
7 driving while impaired?

8 A. No.

9 Q. And when I say that that includes intoxicated,
10 you know what I mean, right?

11 A. Right.

12 Q. What about in your home, I saw someplace that
13 you have five daughters; is that correct?

14 A. Correct.

15 Q. They're all grown now; is that correct?

16 A. Correct.

17 Q. So none of them live in the home with you?

18 A. No.

19 Q. In the year prior to you dropping dirty, who
20 lived in the home with you?

21 A. Just Elizabeth.

22 Q. Okay. How old was Elizabeth then or how old
23 is she now? We can do the math.

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 A. She's 28.

2 Q. Okay. And Elizabeth is the one you described
3 as the hermit?

4 A. Yep.

5 Q. Okay. Did Elizabeth ever smoke marijuana in
6 your home?

7 A. No.

8 **MR. HOUSH:** Objection. Object to form.

9 A. Not that I know of, no.

10 Q. Does Elizabeth use marijuana?

11 A. No.

12 Q. And you have another daughter, I believe
13 Nicole?

14 A. Correct.

15 Q. Okay. How old is Nicole?

16 A. 31.

17 Q. Okay. Where does she live?

18 A. In Pennsylvania.

19 Q. Does she smoke marijuana?

20 A. No.

21 Q. In the year preceding your -- you dropping
22 dirty, were you ever in the presence of anyone
23 smoking marijuana?

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 A. No.

2 Q. Do you smoke cigarettes?

3 A. No.

4 Q. Do you use any tobacco products?

5 A. No.

6 Q. Do you ever vape?

7 A. No.

8 Q. Do you ever use or smoke peyote?

9 A. No.

10 Q. Do you ever use any injectable drugs?

11 A. Nope.

12 Q. When you turned around to open the window I
13 saw something round in your pocket. It looks
14 like it might be a tin of tobacco?

15 A. Correct.

16 Q. Is that a tin of tobacco?

17 A. No.

18 Q. Yesterday you talked a little bit about some
19 of the prescription drugs that Dr. Choi put
20 you on?

21 A. Correct.

22 Q. Did you discuss using those drugs and
23 operating a truck with him?

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 A. Yes, I did.

2 Q. And what did he tell you?

3 A. That I would be okay.

4 Q. Okay. I recall seeing a note that you might
5 have written that said that you believed that
6 if you used the hydrocodeine --

7 A. Hydrocodone.

8 Q. Hydrocodone that you'd be in violation of your
9 company's regulations; is that correct?

10 A. Correct.

11 Q. Did you still use the hydrocodone?

12 A. Not while I was driving.

13 Q. Not while you were driving. Did you ever
14 purchase any prescription drugs online?

15 A. Nope.

16 Q. When you dropped dirty were you taking any --
17 were you on a diet at the time you dropped
18 dirty?

19 A. I don't remember.

20 Q. And when was the last time you smoked or used
21 any marijuana?

22 A. I -- over 30 years.

23 Q. Okay. Are you in favor of legalizing

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 marijuana?

2 **MR. HOUSH:** Object to form.

3 A. I really don't have an opinion on it.

4 Q. Okay. Does your wife have an opinion on it?

5 A. I believe she does.

6 **MR. HOUSH:** Object to form.

7 Q. Do you know what it is?

8 A. No.

9 Q. What is your political stance on the use of
10 marijuana?

11 **MR. HOUSH:** Object to form.

12 A. I try to stay out of politics.

13 Q. You don't have any views as to nothing on
14 that?

15 A. No.

16 **MR. HOUSH:** Object to form.

17 Q. What's that?

18 A. No, I do not.

19 Q. Okay. What about your wife?

20 A. Excuse me?

21 Q. What about your wife?

22 A. I can't speak for her.

23 Q. You don't know?

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 A. I don't know.

2 Q. When you were your own business -- scratch
3 that.

4 Other than this drug test where you
5 dropped dirty, have you ever failed any other
6 drug tests?

7 A. No.

8 Q. Before -- when you were hired at Enterprise,
9 part of the training involved substance abuse
10 training; do you recall that?

11 A. I don't recall it, but yeah, I know I did it.

12 Q. Did they talk to you during that -- that
13 process about the use of hemp or hemp-based
14 products?

15 A. About what?

16 Q. About the use of hemp or hemp-based products?

17 A. I don't remember hemp-based products, no.

18 Q. Okay. Did they talk to you about use of
19 products containing cannabinoids?

20 A. No.

21 Q. Why do you say no so definitively?

22 A. Because I never heard that word back then.

23 Q. Okay. When did you first hear that word?

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 A. When I looked at the ad.

2 Q. Okay. In the North Dakota accident you made
3 reference to a pick-up truck being involved in
4 that; do you recall that?

5 A. Yes.

6 Q. We're going to get back to that in a second.
7 Did you discuss the use of the Dixie Elixir
8 with Dr. Choi?

9 A. After I got fired.

10 Q. Okay. Why not beforehand?

11 A. Because I didn't see him before that.

12 Q. Did you discuss using any non -- or any
13 homeopathic remedies for your pain with
14 Dr. Choi?

15 A. No.

16 Q. Do you know what I mean when I say
17 homeopathic?

18 A. Correct.

19 Q. Regarding your diagnosis of Hepatitis C, can
20 you tell me what prompted you to get tested
21 for it?

22 A. I didn't get tested -- I did not initial the
23 test, they just basically did it through blood

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 work. I was unaware of it. That's when I was
2 diagnosed with it. I had tested prior to that
3 at my request.

4 Q. You were tested for it?

5 A. Prior to having it, correct.

6 Q. Okay. And that was because your father said
7 hey, you might have had a dirty needle --

8 A. Right.

9 Q. -- from those tattoos?

10 A. Yep.

11 Q. Where are your tattoos? I can't see them on
12 your arms.

13 A. They're on my shoulder.

14 Q. What type of tattoos are they?

15 A. They don't say anything.

16 Q. What is it?

17 A. A skull.

18 Q. A skull.

19

20 The following was marked for identification:

21 Exhibit 28 Motor Vehicle Crash Worksheet

22

23 BY MR. MAZZOLA:

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 Q. This is what we marked as Exhibit 28.

2 That's the accident report that was done by
3 the police and this ties into the question I
4 just asked you about the pick-up truck.

5 A. Yeah.

6 Q. I didn't see a reference to the pick-up truck
7 on that accident report, do you know why that
8 is?

9 A. Because it was pretty much I was basically a
10 single accident and then he ran into me
11 afterwards. There was also another truck
12 that -- semi-truck ran into the police car as
13 well.

14 Q. Okay.

15 A. So they just called it a single-vehicle
16 accident.

17 Q. Okay. So in that accident a pick-up truck hit
18 you?

19 A. Afterwards, yeah.

20 Q. Okay. And then another -- another truck hit a
21 cop car?

22 A. Yeah, while they were out --

23 Q. While they were cleaning it up?

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 A. Yep.

2 Q. Okay. I have the pictures. The pick-up truck
3 is not in the picture, do you know why that
4 is?

5 A. I have no idea.

6 Q. Was the pick-up truck drivable?

7 A. I believe so, yeah.

8 Q. Okay. When the MRO called you to tell you
9 that you dropped dirty, at that time did you
10 have any idea where -- why you might have
11 dropped dirty?

12 A. No.

13 Q. When did you first suspect that you dropped
14 dirty because of the Dixie Elixir?

15 A. Oh, after -- before I took the drug test the
16 next day.

17 Q. So before you had the test in -- in Dumas,
18 Texas?

19 A. Right.

20 Q. Why what led you to --

21 A. Because that's the only thing because it's
22 hemp based.

23 Q. So is it something about it being hemp based

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 that it led you to believe it might have been
2 an issue?

3 A. Well, hemp has very minute THC in it.

4 Q. Okay. So before you used the product you knew
5 that hemp-based products had --

6 A. Correct.

7 Q. -- as you just said very minute THC?

8 A. Very minute, correct. And that's why we made
9 sure that it had zero percent.

10 Q. Okay. So although you were aware before you
11 purchased the product that hemp-based products
12 had minute amounts of THC in it you still went
13 ahead and purchased it; is that correct?

14 A. No, I made sure that that product had zero
15 percent before I purchased it. I know that
16 hemp does contain very little THC, but it is
17 legal.

18 Q. Okay. So you understand that hemp-based
19 products before you purchased it?

20 A. Correct.

21 Q. Before you went on the Internet?

22 A. Correct.

23 Q. Before you listened to the video, before all

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—DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17—

1 of that, after you first saw the product
2 reviewed in this marijuana magazine?

3 A. Correct.

4 Q. You knew that hemp-based products contained in
5 your words minute amounts of THC, correct?

6 A. In raw form, yeah.

7 Q. Okay. Why do you say raw form?

8 A. Because when it's on the shelf it doesn't
9 because it's legal.

10 Q. Okay. But you do know that hemp products
11 contain minute amounts of THC?

12 A. Before they're processed. No, not hemp
13 products, hemp itself.

14 Q. Hemp itself, okay. So although you knew that
15 hemp itself contains THC; is that correct?
16 Although you knew that; is that correct?

17 A. Yeah.

18 Q. And although you knew that and you knew that
19 the DOT regulations were a zero tolerance
20 policy you went ahead and purchased this
21 product; is that correct?

22 A. That's why we did the research to make sure
23 there was zero THC.

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 Q. Okay. You know that decaf coffee still
2 sometimes has a little bit of caffeine in it,
3 right?

4 MR. HOUSH: Object to form.

5 A. Yes, I do.

6 Q. Okay. And if your employer said, you know,
7 don't drink coffee, would you drink decaf
8 coffee?

9 A. I don't know.

10 Q. I mean, using your logic to get around the
11 caffeine or the THC would you have used decaf
12 coffee?

13 MR. HOUSH: Object to form.

14 A. I said I don't know.

15 Q. Okay. You were asked in connection with your
16 tax returns -- can I see the tax returns?
17 There was a question asked of you yesterday by
18 Mr. Boron regarding audits and I think you
19 said you had not been audited for any of these
20 years that we showed you. Have you ever been
21 audited by the IRS?

22 A. Yes, I have.

23 Q. And when was that?

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 A. I don't know. 2008 maybe, guessing.

2 Q. Okay. And what were the circumstances of that
3 audit?

4 A. We had bought a -- an energy drink business
5 for our daughters.

6 Q. Okay. What do you mean an energy drink
7 business for your daughters?

8 A. It was a distribution.

9 Q. What kind of energy drink?

10 A. It's called Nitro 2 Go.

11 Q. What's Nitro 2 Go?

12 A. Energy drink.

13 Q. What's in it?

14 A. B vitamins, taurine like Red Bull.

15 Q. Which daughter?

16 A. Yolanda and Erica.

17 Q. What happened to that business?

18 A. It didn't do too well.

19 Q. Okay. It's closed?

20 A. Yeah.

21 Q. Okay. I'm going to put these tax returns in
22 front of you again, okay? You have a claim
23 that you've suffered lost wages as a result of

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 this matter; is that correct?

2 A. Yep.

3 Q. Okay. What was your total -- what was your
4 total income in 2011?

5 A. 140,156.

6 Q. Okay. And what was it in 2012?

7 A. 88,294.

8 Q. 2012 is the year you had the accident; is that
9 correct?

10 A. Correct.

11 Q. Okay. Had you not been fired in 2012 would
12 your income have naturally gone down because
13 you were out of work on comp?

14 A. Yeah.

15 Q. Okay.

16 A. Slightly, yeah.

17 Q. Okay. So about how many months in 2012 do you
18 blame our clients for you being out of work?

19 A. November to December.

20 Q. Okay. Three months, right?

21 A. Yeah.

22 Q. Two months?

23 A. October to November, December, yeah.

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DOUGLAS J. HORN - BY MR. MAZZOLA - 05/09/17

1 Q. Okay. That's for 2012, right?

2 A. Correct.

3 Q. Okay. What was your income in 2013?

4 A. It's like 34,392.

5 Q. Okay. 34 hundred -- thousand, right?

6 A. Yes.

7 Q. That was 2013, right?

8 A. Correct.

9 Q. What was it again in 2011?

10 A. 140,156.

11 Q. 140,156. Did you get a raise for 2012?

12 A. Not that I'm aware of, no.

13 Q. Okay. And what was it for 2014?

14 A. It looks like 63,164.

15 Q. And 2015?

16 A. 129,254.

17 Q. And 2016? It was 156, right?

18 A. I have no idea.

19 Q. Yeah, take your time.

20 A. Here it is. Yeah, 156,196.

21 Q. For 2017 has your work been limited or
22 hampered because of what happened with the
23 connection with the Dixie Elixir product?

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1 A. No.

2 Q. Okay. So no one said to you guys hey, Cindy
3 and James, you know, we're going to fire you
4 again because you took that Dixie Elixir
5 product and dropped dirty four years ago;
6 anyone say that to you?

7 A. No.

8 Q. Is it fair to say that you're making now in
9 2016 more than you were making in 2011?

10 A. No, I'm working harder.

11 Q. What do you mean working harder?

12 A. Because we get paid by the mile and I get paid
13 less by the mile with this company than I did
14 with Enterprise.

15 Q. What do you get paid per mile now?

16 A. 55.75.

17 Q. 55.75. What did you get paid at Enterprise?

18 A. 64.

19 Q. How many miles did you do last year?

20 A. I'm not sure.

21 Q. How many miles did you do at your last full
22 year of Enterprise in 2011?

23 A. I'm not sure on that either.

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1 Q. When you were at Enterprise in 2011 were you
2 doing all the miles that were available to you
3 or did you ever turn down miles?

4 A. There's been very few times where you had to
5 turn down miles.

6 Q. At Enterprise?

7 A. Only because of log violations.

8 Q. Okay. And then at the new job, XC --

9 A. ICX.

10 Q. ICX, do you ever turn down miles?

11 A. No.

12 Q. So at Enterprise you never turned down miles;
13 is that correct?

14 A. Correct.

15 Q. And at ICX you've never turned down miles; is
16 that correct?

17 A. Correct.

18 Q. Okay. Had the DOT regulations since 2011 and
19 today changed in any way?

20 A. No.

21 Q. In terms of how many miles you can do?

22 A. No.

23 Q. Not miles, hours, right?

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1 A. Right.

2 Q. The amount of miles you do is a function of a
3 number of fact;; isn't that correct?

4 A. Yes.

5 Q. It's about the number of hours you can work in
6 a day, right?

7 A. Yeah.

8 Q. It's about what part of the country you're
9 driving in; is that correct?

10 A. Pretty much, yeah.

11 Q. Because if you're working the Northeast
12 corner, say, Boston to, say, Richmond you're
13 going to have a lot more traffic and less
14 miles, correct?

15 A. Correct. Correct.

16 Q. Did the part -- have the parts of the country
17 that you've driven in changed between 2011 and
18 2016?

19 A. Yeah, I would say so.

20 Q. Okay. And in what respect? Were you getting
21 routes with less traffic?

22 A. It was kind of a mixture.

23 Q. Okay. Now it's kind of a mixture?

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1 A. Yeah, I really can't say. I mean --

2 Q. Now you said that in 2016 even though you made
3 more than you did in 2011 that's because you
4 had to work harder; is that correct?

5 A. Correct.

6 Q. How do you work harder when you're limited by
7 the amount of hours you can do by Federal
8 regulation?

9 A. With Enterprise we could request to get laid
10 over.

11 Q. Okay.

12 A. And this company it's pretty much work, work,
13 work.

14 Q. What does lay over mean?

15 A. We would lay over.

16 Q. Did they pay you to lay over?

17 A. Yes, they did.

18 Q. What does that mean?

19 A. They would pay us when we got laid over.

20 Q. And they would pay you how much?

21 A. Well, they paid us \$150 a day per person.

22 Q. Okay. So if you're just sitting around
23 waiting for another load they'll pay you?

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1 A. Correct.

2 Q. So that's the difference, right?

3 A. There's a lot of variables.

4 Q. Well, you said you're working harder now?

5 A. Well, I can't go home when I want to with this
6 company and with Enterprise I went home a lot
7 more.

8 Q. Okay. What else?

9 A. That's pretty much it.

10 Q. Okay. So you're saying now you can't go home
11 as much as you could when you were with
12 Enterprise, right?

13 A. Right.

14 Q. But you are making more money; is that
15 correct?

16 A. Yeah, because I'm working more.

17 Q. But you can only drive as a driver it's 8
18 hours a day?

19 A. No, it's 11 hours a day.

20 Q. 11 hours. You can only drive 11 hours a day,
21 right?

22 A. Correct.

23 Q. And your wife can only drive 11 hours a day;

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1 is that correct?

2 A. Correct.

3 Q. So no matter where you are in America that
4 truck can only be run for 22 hours in a
5 24-hour period; is that correct?

6 A. Correct.

7 Q. And that was the same when you were at
8 Enterprise?

9 A. Correct.

10 Q. And at the new job you're getting as many
11 miles as you want; is that correct?

12 A. No, I'd say as much as I want because there's
13 been times where I don't want miles.

14 Q. Okay. And has there ever been times where you
15 do want miles?

16 A. Excuse me?

17 Q. Has there ever been times when you do want
18 miles when you can't get them?

19 A. Correct, yes.

20 Q. So between Enterprise and the new job tell me
21 what -- what's the problem with the new job?

22 A. Just home time.

23 Q. Home time?

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1 A. That's a big thing.

2 Q. Just home time?

3 A. That's a lot of it.

4 Q. Okay. Anything else?

5 A. Not that I can think of offhand.

6 Q. Okay. Just home time. Okay. But you do
7 admit you're making more than you were at
8 Enterprise?

9 A. I'm making less per mile than what I made down
10 there.

11 Q. You made more money in 2016 than in 2011?

12 A. Because I didn't go home.

13 Q. Okay.

14 A. That's what I'm saying, because I didn't go
15 home. I'd be going home a lot more.

16 Q. Okay. But that's your choice?

17 A. What do you mean it's my choice?

18 Q. It's your choice to do that?

19 A. No, I don't have that choice.

20 Q. Okay.

21 A. To go home? No.

22 Q. It's your choice to do the miles at the new
23 job?

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1 A. It's pretty much forced on us. They give us a
2 dispatch, they want it there.

3 Q. Okay. Have you tried to find another job that
4 pays more per mile?

5 A. Yes.

6 Q. Okay. Have you been able to?

7 A. No.

8 Q. Why not?

9 A. I don't know why.

10 Q. Okay. Has anyone said you can't have this job
11 that pays 72 cents a mile because you dropped
12 dirty four years ago?

13 A. Have I had that told to me recently?

14 Q. Yeah.

15 A. Not recently I haven't called anyone, no.

16 Q. Okay. Is there any record now as far as
17 you're aware that perspective employers will
18 see that dirty drop?

19 A. Yeah, they'll see it because they go 10 years
20 back.

21 Q. Okay. But they can hire you, though?

22 A. If it's on their policy, yeah. It's all about
23 policy.

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1 Q. So the company may have a policy that says
2 they can't hire you?

3 A. Correct.

4 Q. For 2017 to the best of your knowledge are you
5 doing the same amount of miles for this year
6 that you did in 2016?

7 A. I don't know.

8 Q. Okay.

9 A. I haven't looked.

10 Q. For 2017 to the best of your knowledge are you
11 on target to make around about the same income
12 you made in 2016?

13 A. We should.

14 Q. Okay. Have you made a demand for money in
15 this case?

16 A. What do you mean?

17 Q. Have you asked for money from my clients and
18 Mr. Boron's clients?

19 A. Through my lawyer, yes.

20 Q. How much did you ask for?

21 A. To my lawyer?

22 Q. Yeah.

23 A. We set on 10,000,000.

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1 Q. \$10,000,000?

2 A. Yes.

3 Q. Why do you think you're entitled to
4 \$10,000,000?

5 A. Because I'm limited on the jobs that I can
6 get.

7 Q. Okay. Anything else?

8 A. And that was basically what we calculated for
9 lost wages.

10 Q. Okay.

11 A. If we were to get those jobs.

12 Q. Okay.

13 A. Because we had planned on either going into
14 crude oil and if that didn't work out we had
15 explosive permits for Canada and we were going
16 to be doing DOD work, that was kind of our
17 plan after Elizabeth moved out.

18 Q. Okay. But you're making as much now or more
19 than you were in 2011; is that correct?

20 A. I make as much now, yeah.

21 Q. Okay. Now what's crude oil? Why's that
22 different?

23 A. It pays more.

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1 Q. How much more by the mile?

2 A. It's not done by the mile, it's done by the
3 barrel.

4 Q. Okay. So if you were driving crude oil, what
5 would you estimate that you and Cindy would
6 make?

7 A. About 120,000 each.

8 Q. And why are you not able to drive crude oil?

9 A. We were going to go into that with Enterprise.
10 We were starting to transition into that.

11 Q. We talked about that you made an application;;
12 isn't that correct?

13 A. Yeah, we were actually doing crude oil in
14 North Dakota with Enterprise Products and we
15 had an employee number that was assigned to
16 us.

17 Q. Okay. But you said that they never -- they
18 never acted on your application?

19 A. Not on that application, no.

20 Q. Okay. And they never acted on -- it was way
21 before you ever dropped dirty;; isn't that
22 correct?

23 A. They never acted on -- wait, can you say that

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1 again?

2 Q. They never acted on your application for crude
3 oil; isn't that correct?

4 A. Correct, yeah.

5 Q. Okay. And the fact that they -- that was a
6 long time before you dropped dirty; isn't that
7 correct?

8 A. It was like two years, yeah.

9 Q. Okay. So it wasn't as if you're dropping
10 dirty, say, oh, you know what, the Horns, we
11 can't let them drive crude oil they're
12 dropping dirty; isn't that correct?

13 A. I don't understand what you're saying.

14 Q. Your application to drive crude oil for
15 Enterprise was rejected at least two years
16 before you ever knew about this product?

17 A. I don't know if it was rejected, I just didn't
18 get a response.

19 Q. Okay. That was at least two years before,
20 right?

21 A. Correct.

22 Q. Okay. Now in terms of crude oil, have you
23 sought a job transporting crude oil since you

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1 left Enterprise?

2 A. Yes.

3 Q. Okay. And from whom?

4 A. I don't remember the names.

5 Q. Okay. Do you have any rejection letters from
6 them?

7 A. I believe I do.

8 Q. Okay. And does it say we're not going to hire
9 you because you dropped dirty on a drug test?

10 A. I don't remember.

11 Q. Okay. Have you shared those letters with your
12 lawyer?

13 A. If I had them, yes, I did.

14 Q. Okay. When was the last time you sought
15 employment to operate -- to drive crude oil?

16 A. I'm not sure.

17 Q. You said also something about explosives, what
18 was that about?

19 A. Well, that was another option, we were going
20 to do Department of Defense work.

21 Q. Okay. Where? In the United States?

22 A. Yeah, and into Canada.

23 Q. And what's the rate for that?

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1 A. It varies and it depends on if you're a
2 company or owner operator.

3 Q. Okay. Were you going to be an owner operator?

4 A. We were thinking about it, yeah.

5 Q. Why don't you do that now?

6 A. Because those companies won't hire me as a
7 company.

8 Q. Okay. What about being an owner operator?

9 A. This company that I'm with or?

10 Q. No. What about being an owner operator with
11 driving explosives for the Department of
12 Defense?

13 A. They won't hire me at all.

14 Q. Why not?

15 A. Because of the dirty urine.

16 Q. And that will stay there for 10 years?

17 A. They'll see it for 10 years, yeah.

18 Q. Okay.

19 A. And a lot of policies are that if you've ever
20 done a dirty random they will never hire you.

21 Q. Okay. Have you -- have you sought employment
22 with a company that transports explosives for
23 the Department of Defense?

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1 A. Yeah.

2 Q. Okay. When did you do that -- have you sought
3 a job with a company that transports
4 explosives with the Department of Defense?

5 A. Yeah.

6 Q. When did you do that?

7 A. Off and on after we got fired.

8 Q. Okay. And do you have any letters of
9 rejection from any of those companies?

10 A. No.

11 Q. So how do I know you sought a job with them?

12 **MR. HOUSH:** Object to form.

13 A. Well, just with the company and their company
14 policy, I guess reaffirming with the company
15 and asking them what their policy is.

16 Q. Okay. So if you gave me all the names of all
17 these companies that you sought jobs from?

18 A. Correct.

19 Q. I can call them up --

20 A. Right.

21 Q. -- and say hey, did James Horn ask for a job
22 and they would have a record of that, right?

23 A. I don't know if they would have a record of it

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1 because it was all telephone.

2 Q. Okay. Can we take five minutes?

3

4 (Recess taken)

5

6 (Record read back by reporter)

7

8 **BY MR. MAZZOLA:**

9 Q. Okay. I want to ask you back again -- going
10 back to the hemp products you said you were
11 using the hemp shakes when you were a diet; is
12 that correct?

13 A. Correct.

14 Q. I got to think over the past, you know, five
15 or six years you've gone on and off diets; is
16 that correct?

17 A. Correct.

18 Q. And when you go on a diet is your process to
19 use the hemp shake products?

20 A. Not regularly.

21 Q. Not regularly. So that's not your standard
22 diet process?

23 A. No.

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1 Q. So it's not true that if you are on a diet
2 you're using a hemp-based product; is that
3 correct?

4 A. Correct.

5 Q. Okay. Before you purchased those products did
6 you do any research on them to be sure you
7 wouldn't be in violation of DOT drug testing
8 regulations?

9 A. I didn't personally, no.

10 Q. Okay. Did Cindy?

11 A. I believe she did.

12 Q. Okay. I have a note over here that yesterday
13 I believe you said something along the lines
14 that someone told you that other products
15 might mess things up with the lab. Do you
16 recall saying something like that?

17 A. Yeah, I do.

18 Q. And now it's coming back to me. I think that
19 was in connection with you wanted to send
20 other Dixie products off to this testing lab?

21 A. Correct.

22 Q. Do you recall that?

23 A. Yes.

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1 Q. And the guy on the other end said he didn't
2 want any other products; is that correct?

3 A. Correct.

4 Q. And he said he didn't want them because it
5 might mess things up with the lab; is that
6 correct?

7 A. Correct.

8 Q. What did he mean by that?

9 A. I don't know what he meant.

10 Q. Do you have any idea what he meant by that?

11 A. That if it had THC that there may be paperwork
12 for them to fill out and stuff like that, I'm
13 assuming.

14 Q. After you dropped dirty and got fired, Cindy
15 quit; isn't that correct?

16 A. Yes.

17 Q. Why?

18 A. Because we're a team.

19 Q. Okay. Could Cindy have continued to drive for
20 the remainder of the year?

21 A. She could have.

22 Q. After the wreck you got hurt and went out on
23 Workers' Comp; isn't that correct?

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1 A. Correct.

2 Q. Cindy didn't get hurt, did she?

3 A. Yes, she did.

4 Q. Did Cindy go out on Workers' Comp?

5 A. Yes, she did.

6 Q. So the reason Cindy quit was because you are a
7 team; is that correct?

8 A. That's correct.

9 Q. Even though she could have continued driving
10 for the company?

11 MR. HOUSH: Object to form.

12 A. Could have.

13 Q. That's correct, right?

14 A. Correct.

15 MR. MAZZOLA: Eric, I'm done.

16 MR. BORON: Let's get this marked.

17 Where's that Exhibit Number?

18

19 The following was marked for identification:

20 Exhibit 29 E-mail dated 11/23/2012, two
21 pages

22 Exhibit 30 Mike Choi, M.D. Doctor Review

23

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EXAMINATION BY MR. BORON:

1
2
3 Q. Mr. Horn, showing you what's marked as Exhibit
4 29 for today's deposition. It's a two-page
5 exhibit. Did you type up what appears here in
6 this exhibit? It starts, thank you for taking
7 the time to evaluate my situation.

8 A. Yes.

9 Q. Is this part of an e-mail that you sent
10 somebody?

11 A. Yes.

12 Q. There's a date in the upper right-hand corner,
13 November 23, 2012. Do you see that date? I
14 know all the print's small.

15 A. Okay. Yeah.

16 Q. There's a reference to the e-mail being sent
17 from James Horn to ElizabethHorn@live.com?

18 A. Correct.

19 Q. Is all the text that we see underneath there
20 an e-mail that you sent to Elizabeth Horn?

21 A. Yeah.

22 Q. Is that your daughter?

23 A. Yes.

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1 Q. The one that lives in Colorado?

2 A. No, she lives in New York.

3 Q. New York State?

4 A. No, Owego.

5 Q. Oh, okay. Owego. And you wrote this e-mail
6 to her in November of 2012?

7 A. No, I actually wrote this for somebody else.

8 Q. Has something been copied and pasted and put
9 together in --

10 A. No.

11 Q. It doesn't represent what you sent to
12 Elizabeth?

13 A. No.

14 Q. No. Why were you sending this to Elizabeth?

15 A. Probably to have her print it.

16 Q. Okay. The third paragraph from the bottom of
17 the first page of the exhibit makes reference
18 to you sending for testing a bottle that had
19 100 milligrams in it; do you see that?

20 A. Yes.

21 Q. Okay. So you sent a product to EMSL to be
22 tested, that was your testimony yesterday?

23 A. Correct.

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1 Q. And is this the same thing that you mailed to
2 EMSL that you're referring to in the e-mail?

3 A. Wait, can you rephrase that?

4 Q. Yesterday you testified that you sent an
5 unopened bottle?

6 A. Correct.

7 Q. To EMSL for testing?

8 A. Yes.

9 Q. And here in this e-mail there's reference to
10 you sending out a bottle that's got 100
11 milligrams to a place to be tested?

12 A. Correct.

13 Q. Is that the same --

14 A. Yes.

15 Q. Same product that you were describing
16 yesterday?

17 A. Yes.

18 Q. Okay. So you think that you tested dirty
19 because of a 500 milligram bottle, but you
20 sent a different quantity to be tested at an
21 EMSL Lab, correct?

22 A. Correct.

23 Q. Okay. What else was different about that

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1 sample that you sent to the EMSL Lab?

2 **MR. HOUSH:** Object to form.

3 A. I don't know. Just the milligrams.

4 Q. Do you know what the ingredients were of the
5 bottle?

6 A. It's supposed to be the same.

7 Q. Well, did you look at the label on the bottle?

8 A. I didn't look at that bottle.

9 Q. You never opened up that package?

10 A. No.

11 Q. So you don't know what was inside that
12 package?

13 A. No.

14 Q. In the second last paragraph on the first page
15 of this exhibit the last sentence says, I have
16 printouts on everything I have stated and can
17 have them faxed?

18 A. Correct.

19 Q. Do you have any printouts of any website
20 information from Dixie or any of the other
21 defendants in this lawsuit that predates the
22 date that you tested dirty?

23 A. I gave them to my lawyer, yes.

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1 Q. Well, we haven't seen any printouts predating
2 the date of your sample.

3 A. As far as the articles that I researched?

4 Q. There's no --

5 A. Is that what you're talking about?

6 Q. There's no printout that's dated before the
7 date you tested dirty, they're all dated
8 afterward.

9 A. Correct.

10 Q. Okay. So you printed all those things
11 afterwards, didn't you?

12 A. Yes.

13 Q. So what it says here in the e-mail is not
14 completely accurate. You don't have printouts
15 showing that you did any research before you
16 consumed the product, correct?

17 **MR. HOUSH:** Object to form.

18 A. I'm not sure if I printed out anything before
19 or not. I don't remember.

20 Q. In the last paragraph of this same exhibit,
21 first page, you make a statement that says,
22 I'm not willing to do that or go through drug
23 rehab. Do you see that?

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DOUGLAS J. HORN - BY MR. BORON - 05/09/17

1 A. Correct.

2 Q. What do you mean by not willing to go through
3 drug rehab?

4 A. Well, they wanted me to go through a SAT
5 program and at that time I felt it was kind of
6 an admission to doing drugs and I didn't do
7 drugs.

8 Q. How long did you wait to go through the drug
9 rehab program?

10 A. August of the next year.

11 Q. And did that delay your ability to get your
12 next job?

13 A. Did it delay my ability?

14 Q. Yes.

15 A. I could have done the rehab at any time.

16 Q. Does going through the rehab help your ability
17 to get a job after the dirty?

18 A. Correct.

19 Q. Was Dr. Kenneth Dennis the person that you
20 interacted with for your drug rehab?

21 A. Correct.

22 Q. Exhibit 30, would you take a look at that for
23 me, sir. It's got a picture of a doctor, Mike

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1 Choi, M.D., on the first page of the exhibit.
2 This is Exhibit 30. Is this the Dr. Choi you
3 were referring to in your earlier testimony
4 yesterday?

5 A. Yes.

6 Q. Is Dr. Mike Choi affiliated in some way with a
7 medical group or medical treatment business
8 called Guthrie?

9 A. Yes.

10 Q. And Guthrie has offices both down in Sayre,
11 Pennsylvania and up in the Southern Tier of
12 New York State?

13 A. Correct.

14 Q. Okay. Mr. Horn, at the time that you tested
15 positive for the THC were you taking
16 hydrocodone that had been prescribed by
17 Dr. Choi?

18 A. I had it prescribed, I hadn't taken any at the
19 time of the wreck.

20 Q. I'm not talking about the time of the wreck,
21 I'm talking about the 2012 urine test.

22 A. Oh, I'm not sure.

23 Q. You don't recall whether you did or did not?

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1 A. No, I did not.

2 Q. No. Tell me whether you recall whether you
3 took it or not on either the day before or the
4 day of the test?

5 A. I didn't take it the day before or the day of
6 the test.

7 Q. Do you have any record that shows you didn't
8 take it on those days?

9 MR. HOUSH: Object to form.

10 A. No.

11 Q. Were you in possession of hydrocodone pills on
12 those days?

13 A. I don't remember.

14 Q. Do you still have hydrocodone pills from
15 Dr. Choi?

16 A. Yes, I do.

17 Q. And what's the last date that he prescribed
18 hydrocodone for you?

19 A. Two years ago.

20 Q. Okay. Has there ever been a period of time
21 between 2012 and 2017 where Dr. Choi was not
22 prescribing hydrocodone for you?

23 A. It's not like every month.

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DOUGLAS J. HORN - BY MR. BORON - 05/09/17

1 Q. Have you gotten a prescription in each of
2 those years at some point --

3 A. Yes.

4 Q. -- from Dr. Choi for hydrocodone?

5 A. Yes.

6 Q. And how do you fill those prescriptions?

7 A. At the pharmacy there locally.

8 Q. Do you order online?

9 A. No.

10 Q. Do you order your hydrocodone online?

11 A. No.

12 Q. You go to a pharmacy?

13 A. Correct.

14 Q. In Vestal?

15 A. In Sayre.

16 Q. Sayre. Has that been the case for every year
17 between 2012 and 2017?

18 A. No.

19 Q. How did you fill your prescriptions for
20 hydrocodone in 2012?

21 A. I'm not sure. Locally.

22 Q. Did you order your hydrocodone online at any
23 time?

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DOUGLAS J. HORN - BY MR. BORON - 05/09/17

1 A. No.

2 Q. Any time in your life?

3 A. No.

4 Q. You made reference yesterday to the YouTube
5 video where you said that Tripp Keber was
6 talking about Dixie X products. Do you
7 remember testifying about that?

8 A. Yes.

9 Q. Was it literally a video where you could watch
10 and see somebody talking to somebody else on
11 the video?

12 A. Correct.

13 Q. It was wasn't an audio only item, correct?

14 A. Correct.

15 Q. You're sure about that?

16 A. Yeah.

17 Q. 100 percent sure?

18 A. Yeah.

19 Q. How many times did you watch that video?

20 A. Just once.

21 Q. Just one time?

22 A. Yeah.

23 Q. You just don't know what date you watched it?

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DOUGLAS J. HORN - BY MR. BORON - 05/09/17

1 A. No.

2 Q. And you're 100 percent sure you only watched
3 it one time?

4 A. Yep.

5 MR. BORON: I don't have anything else.

6 MR. MAZZOLA: We're done.

7

8 (Deposition concluded at 10:54 a.m.)

9 * * * * *

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1 STATE OF NEW YORK)

2) ss.

3 COUNTY OF ERIE)

4
5 I, MARISSA A. ASHCROFT, Notary Public, in and
6 for the County of Erie, State of New York, do
7 hereby certify:

8 That the witness whose testimony appears
9 hereinbefore was, before the commencement of
10 their testimony, duly sworn to testify the
11 truth, the whole truth and nothing but the
12 truth; that said testimony was taken pursuant
13 to notice at the time and place as herein set
14 forth; that said testimony was taken down by
15 me and thereafter transcribed into
16 typewriting, and I hereby certify the
17 foregoing testimony is a full, true and
18 correct transcription of my shorthand notes so
19 taken.

20 I further certify that I am neither counsel
21 for nor related to any party to said action,
22 nor in anyway interested in the outcome
23 thereof.

IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed my seal this
9th day of May, 2017.

Marissa A. Ashcroft

MARISSA A. ASHCROFT, Notary Public

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\$	23 [1] - 46:13 24-hour [1] - 32:5 28 [4] - 3:6, 12:1, 18:21, 19:1 29 [3] - 3:7, 45:20, 46:4	accident [7] - 17:2, 19:2, 19:7, 19:10, 19:16, 19:17, 25:8 accurate [1] - 50:14 acted [4] - 37:18, 37:20, 37:23, 38:2 Action [1] - 1:6 action [1] - 57:15 ad [1] - 17:1 admission [1] - 51:6 admit [1] - 33:7 affiliated [1] - 52:6 affixed [1] - 57:18 afterwards [3] - 19:11, 19:19, 50:11 ago [3] - 27:5, 34:12, 53:19 ahead [2] - 21:13, 22:20 ALSO [1] - 2:17 America [1] - 32:3 amount [3] - 29:2, 30:7, 35:5 amounts [3] - 21:12, 22:5, 22:11 AND [2] - 1:7, 2:11 anyway [1] - 57:16 APPEARING [3] - 2:2, 2:6, 2:11 application [5] - 37:11, 37:18, 37:19, 38:2, 38:14 arms [1] - 18:12 articles [1] - 50:3 Ashcroft [1] - 1:12 ASHCROFT [2] - 57:5, 57:22 assigned [1] - 37:15 assuming [1] - 44:13 audio [1] - 55:13 audit [1] - 24:3 audited [2] - 23:19, 23:21 audits [1] - 23:18 August [1] - 51:10 available [1] - 28:2 Avenue [1] - 2:14 aware [3] - 21:10, 26:12, 34:17	best [2] - 35:4, 35:10 between [5] - 7:12, 29:17, 32:20, 53:21, 54:17 big [1] - 33:1 bit [2] - 13:18, 23:2 blame [1] - 25:18 blood [1] - 17:23 BORON [4] - 2:8, 45:16, 46:1, 56:5 boron [1] - 23:18 Boron [1] - 3:3 boron's [1] - 35:18 Boston [1] - 29:12 BOTANICALS [2] - 1:8, 2:11 bottle [7] - 47:18, 48:5, 48:10, 48:19, 49:5, 49:7, 49:8 bottom [1] - 47:16 bought [1] - 24:4 break [2] - 4:21, 7:3 Buffalo [3] - 1:14, 2:4, 2:9 Building [2] - 1:13, 2:8 Bull [1] - 24:14 business [5] - 16:2, 24:4, 24:7, 24:17, 52:7 butt [1] - 31:17 buy [1] - 8:16 BY [7] - 2:3, 2:8, 2:13, 4:6, 18:23, 42:8, 46:1	CINDY [1] - 1:4 Cindy [12] - 2:17, 5:1, 5:9, 5:12, 27:2, 37:5, 43:10, 44:14, 44:19, 45:2, 45:4, 45:6 circumstances [1] - 24:2 Civil [1] - 1:6 claim [1] - 24:22 CLAUDE [1] - 2:13 cleaning [1] - 19:23 clients [3] - 25:18, 35:17, 35:18 closed [1] - 24:19 coffee [4] - 23:1, 23:7, 23:8, 23:12 Colorado [1] - 47:1 coming [1] - 43:18 commencement [1] - 57:8 Comp [2] - 44:23, 45:4 comp [1] - 25:13 companies [3] - 40:6, 41:9, 41:17 company [13] - 27:13, 30:12, 31:6, 35:1, 40:2, 40:7, 40:9, 40:22, 41:3, 41:13, 41:14, 45:10 company's [1] - 14:9 completely [1] - 50:14 computer [3] - 6:8, 6:10, 6:20 computers [4] - 6:12, 6:15, 6:18, 6:23 concluded [1] - 56:8 connection [3] - 23:15, 26:23, 43:19 consumed [1] - 50:16 contain [2] - 21:16, 22:11 contained [1] - 22:4 containing [1] - 16:19 contains [1] - 22:15 continued [2] - 44:19, 45:9 convicted [1] - 11:6 cop [1] - 19:21 copied [1] - 47:8 copy [1] - 5:16 corner [2] - 29:12, 46:12 correct [105] - 5:7, 5:8, 7:5, 7:16, 7:17, 7:18, 7:19, 9:2, 9:6, 9:10, 9:20, 10:12, 11:13, 11:14, 11:15, 11:16, 12:14, 13:15, 13:21, 14:9, 14:10, 17:18, 18:5, 21:6, 21:8,							
1	3 30 [5] - 3:8, 14:22, 45:21, 51:22, 52:2 31 [1] - 12:16 34 [1] - 26:5 34,392 [1] - 26:4 362-1128 [1] - 2:5	4 4 [1] - 3:2 45 [2] - 3:7, 3:8 46 [1] - 3:3	5 500 [1] - 48:19 55.75 [2] - 27:16, 27:17	6 63,164 [1] - 26:14 64 [1] - 27:18 646 [1] - 2:15 663-1860 [1] - 2:15	7 70 [1] - 2:4 716 [2] - 2:5, 2:10 72 [1] - 34:11	8 8 [1] - 31:17 805 [1] - 2:14 855-2800 [1] - 2:10 88,294 [1] - 25:7	9 930 [2] - 1:13, 2:8 9th [2] - 1:14, 57:19	A a.m [2] - 1:15, 56:8 ability [3] - 51:11, 51:13, 51:16 able [3] - 6:19, 34:6, 37:8 abuse [1] - 16:9	B barrel [1] - 37:3 based [11] - 7:20, 16:13, 16:16, 16:17, 20:22, 20:23, 21:5, 21:11, 21:18, 22:4, 43:2 beforehand [1] - 17:10	C caffeine [2] - 23:2, 23:11 calculated [1] - 36:8 Canada [2] - 36:15, 39:22 cannabinoids [1] - 16:19 car [2] - 19:12, 19:21 case [2] - 35:15, 54:16 cents [1] - 34:11 certify [3] - 57:6, 57:12, 57:15 changed [2] - 28:19, 29:17 Choi [12] - 3:8, 13:19, 17:8, 17:14, 45:21, 52:1, 52:2, 52:6, 52:17, 53:15, 53:21, 54:4 choice [5] - 33:16, 33:17, 33:18, 33:19, 33:22 cigarettes [1] - 13:2	
2	2 [2] - 24:10, 24:11 2008 [1] - 24:1 2011 [10] - 25:4, 26:9, 27:9, 27:22, 28:1, 28:18, 29:17, 30:3, 33:11, 36:19 2012 [13] - 4:13, 25:6, 25:8, 25:11, 25:17, 26:1, 26:11, 46:13, 47:6, 52:21, 53:21, 54:17, 54:20 2013 [2] - 26:3, 26:7 2014 [1] - 26:13 2015 [1] - 26:15 2016 [7] - 26:17, 27:9, 29:18, 30:2, 33:11, 35:6, 35:12 2017 [7] - 1:14, 26:21, 35:4, 35:10, 53:21, 54:17, 57:19 22 [1] - 32:4										

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21:13, 21:20, 21:22, 22:3, 22:5, 22:15, 22:16, 22:21, 25:1, 25:9, 25:10, 26:2, 26:8, 28:13, 28:14, 28:16, 28:17, 29:3, 29:9, 29:14, 29:15, 30:4, 30:5, 31:1, 31:15, 31:22, 32:1, 32:2, 32:5, 32:6, 32:9, 32:11, 32:19, 35:3, 36:19, 37:12, 37:22, 38:3, 38:4, 38:7, 38:12, 38:21, 41:18, 42:12, 42:13, 42:16, 42:17, 43:3, 43:4, 43:21, 44:2, 44:3, 44:6, 44:7, 44:15, 44:23, 45:1, 45:7, 45:8, 45:13, 45:14, 46:18, 47:23, 48:6, 48:12, 48:21, 48:22, 49:18, 50:9, 50:16, 51:1, 51:18, 51:21, 52:13, 54:13, 55:12, 55:13, 55:14, 57:13
counsel [1] - 57:15
country [2] - 29:8, 29:16
COUNTY [1] - 57:3
County [1] - 57:6
couple [1] - 6:13
COURT [1] - 1:1
Crash [2] - 3:6, 18:21
crude [11] - 36:14, 36:21, 37:4, 37:8, 37:13, 38:2, 38:11, 38:14, 38:22, 38:23, 39:15

D

Dakota [2] - 17:2, 37:14
date [9] - 5:18, 6:20, 46:12, 46:13, 49:22, 50:2, 50:7, 53:17, 55:23
dated [4] - 3:7, 45:20, 50:6, 50:7
daughter [3] - 12:12, 24:15, 46:22
daughters [3] - 11:13, 24:5, 24:7
days [2] - 53:8, 53:12
decaf [3] - 23:1, 23:7, 23:11
December [2] - 25:19, 25:23

DEFENDANT [2] - 2:6, 2:11
defendants [1] - 49:21
Defendants [1] - 1:9
Defense [4] - 39:20, 40:12, 40:23, 41:4
definitively [1] - 16:21
delay [2] - 51:11, 51:13
demand [1] - 35:14
Dennis [1] - 51:19
Department [4] - 39:20, 40:11, 40:23, 41:4
Deposition [1] - 56:8
deposition [1] - 46:4
described [1] - 12:2
describing [1] - 48:15
DESCRIPTION [1] - 3:5
diagnosed [1] - 18:2
diagnosis [1] - 17:19
DICE [2] - 1:7, 2:6
diet [5] - 14:17, 42:11, 42:18, 42:22, 43:1
diets [1] - 42:15
difference [2] - 7:12, 31:2
different [4] - 8:17, 36:22, 48:20, 48:23
dirty [25] - 8:23, 11:19, 12:22, 14:16, 14:18, 16:5, 18:7, 20:9, 20:11, 20:14, 27:5, 34:12, 34:18, 37:21, 38:6, 38:10, 38:12, 39:9, 40:15, 40:20, 44:14, 48:18, 49:22, 50:7, 51:17
discuss [3] - 13:22, 17:7, 17:12
dispatch [1] - 34:2
distribution [1] - 24:8
DISTRICT [2] - 1:1, 1:2
Dixie [11] - 4:12, 5:23, 9:19, 9:22, 17:7, 20:14, 26:23, 27:4, 43:20, 49:20, 55:6
DIXIE [4] - 1:7, 1:7, 2:11, 2:11
doctor [1] - 51:23
Doctor [2] - 3:8, 45:21
DOD [1] - 36:16
done [7] - 19:2, 37:2, 40:20, 45:15, 51:15, 56:6
DOT [3] - 22:19, 28:18, 43:7
DOUGLAS [2] - 1:4, 1:11

Douglas [1] - 3:2
down [9] - 25:12, 28:3, 28:5, 28:10, 28:12, 28:15, 33:9, 52:10, 57:11
Dr [10] - 13:19, 17:8, 17:14, 51:19, 52:2, 52:6, 52:17, 53:15, 53:21, 54:4
drink [6] - 23:7, 24:4, 24:6, 24:9, 24:12
drivable [1] - 20:6
drive [8] - 31:17, 31:20, 31:23, 37:8, 38:11, 38:14, 39:15, 44:19
driven [1] - 29:17
driver [1] - 31:17
driving [7] - 11:7, 14:12, 14:13, 29:9, 37:4, 40:11, 45:9
drop [1] - 34:18
dropped [13] - 8:23, 14:16, 14:17, 16:5, 20:9, 20:11, 20:13, 27:5, 34:11, 37:21, 38:6, 39:9, 44:14
dropping [4] - 11:19, 12:21, 38:9, 38:12
drug [14] - 7:23, 8:3, 8:5, 10:22, 11:1, 16:4, 16:6, 20:15, 39:9, 43:7, 50:22, 51:3, 51:8, 51:20
drugs [6] - 13:10, 13:19, 13:22, 14:14, 51:6, 51:7
duly [2] - 4:3, 57:9
Dumas [2] - 9:7, 20:17
during [1] - 16:12

E

e-mail [7] - 46:9, 46:16, 46:20, 47:5, 48:2, 48:9, 50:13
E-mail [2] - 3:7, 45:20
EDIBLES [2] - 1:7, 2:11
either [3] - 27:23, 36:13, 53:3
Elixir [8] - 4:12, 5:23, 9:19, 9:22, 17:7, 20:14, 26:23, 27:4
ELIXIRS [2] - 1:7, 2:11
Elizabeth [9] - 11:21, 11:22, 12:2, 12:5, 12:10, 36:17, 46:20, 47:12, 47:14
ElizabethHorn@live.

com [1] - 46:17
employee [1] - 37:15
employer [1] - 23:6
employers [1] - 34:17
employment [2] - 39:15, 40:21
EMSL [5] - 47:21, 48:2, 48:7, 48:21, 49:1
end [1] - 44:1
energy [4] - 24:4, 24:6, 24:9, 24:12
Enterprise [17] - 16:8, 27:14, 27:17, 27:22, 28:1, 28:6, 28:12, 30:9, 31:6, 31:12, 32:8, 32:20, 33:8, 37:9, 37:14, 38:15, 39:1
entitled [1] - 36:3
Eric [1] - 45:15
ERIC [1] - 2:8
Erica [1] - 24:16
ERIE [1] - 57:3
Erie [1] - 57:6
ESQ [4] - 2:3, 2:8, 2:13, 2:13
estimate [1] - 37:5
euphoria [1] - 10:5
evaluate [1] - 46:7
evidence [1] - 5:21
EXAMINATION [3] - 3:1, 4:6, 46:1
Examination [1] - 1:10
examined [1] - 4:3
excuse [2] - 15:20, 32:16
exhibit [6] - 46:5, 46:6, 47:17, 49:15, 50:20, 52:1
EXHIBIT [1] - 3:5
Exhibit [11] - 3:6, 3:7, 3:8, 18:21, 19:1, 45:17, 45:20, 45:21, 46:3, 51:22, 52:2
explosive [1] - 36:15
explosives [4] - 39:17, 40:11, 40:22, 41:4

F

fact [2] - 29:3, 38:5
failed [1] - 16:5
fair [1] - 27:8
far [2] - 34:16, 50:3
father [1] - 18:6
favor [1] - 14:23
faxed [1] - 49:17
Federal [1] - 30:7
felt [1] - 51:5

few [2] - 6:13, 28:4
fill [3] - 44:12, 54:6, 54:19
finish [1] - 4:9
fire [1] - 27:3
fired [5] - 8:4, 17:9, 25:11, 41:7, 44:14
first [10] - 4:3, 4:22, 9:23, 16:23, 20:13, 22:1, 47:17, 49:14, 50:21, 52:1
five [3] - 11:13, 42:2, 42:14
Floor [1] - 2:14
following [2] - 18:20, 45:19
follows [1] - 4:4
FOR [3] - 2:2, 2:6, 2:11
forced [1] - 34:1
foregoing [1] - 57:12
form [14] - 12:8, 15:2, 15:6, 15:11, 15:16, 22:6, 22:7, 23:4, 23:13, 41:12, 45:11, 49:2, 50:17, 53:9
forth [1] - 57:11
four [2] - 27:5, 34:12
FRANK [1] - 2:3
front [1] - 24:22
full [2] - 27:21, 57:12
function [1] - 29:2

G

grocery [1] - 8:15
group [1] - 52:7
grown [1] - 11:15
guess [3] - 4:22, 6:2, 41:14
guessing [1] - 24:1
Guthrie [2] - 52:8, 52:10
guy [1] - 44:1
guys [1] - 27:2

H

hampered [1] - 26:22
hand [1] - 46:12
harder [5] - 27:10, 27:11, 30:4, 30:6, 31:4
Harp [1] - 2:17
HARP [1] - 1:4
Harp-Horn [1] - 2:17
HARP-HORN [1] - 1:4
hear [1] - 16:23
heard [1] - 16:22
heart [2] - 7:9, 7:13

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716-853-5544

<p>held [1] - 1:11 help [1] - 51:16 hemp [35] - 7:3, 7:8, 7:12, 7:13, 7:15, 7:18, 7:20, 8:7, 8:8, 8:9, 8:11, 8:13, 16:13, 16:16, 16:17, 20:22, 20:23, 21:3, 21:5, 21:11, 21:16, 21:18, 22:4, 22:10, 22:12, 22:13, 22:14, 22:15, 42:10, 42:11, 42:19, 43:2 hemp-based [9] - 7:20, 16:13, 16:16, 16:17, 21:5, 21:11, 21:18, 22:4, 43:2 Hepatitis [1] - 17:19 hereby [2] - 57:6, 57:12 herein [1] - 57:10 hereinbefore [1] - 57:8 hereunto [1] - 57:18 hermit [1] - 12:3 high [1] - 10:3 hire [6] - 34:21, 35:2, 39:8, 40:6, 40:13, 40:20 hired [1] - 16:8 hit [2] - 19:17, 19:20 HOLDINGS [2] - 1:7, 2:6 home [15] - 11:12, 11:17, 11:20, 12:6, 31:5, 31:6, 31:10, 32:22, 32:23, 33:2, 33:6, 33:12, 33:15, 33:21 homeopathic [2] - 17:13, 17:17 Horn [5] - 2:17, 3:2, 41:21, 46:17, 46:20 HORN [3] - 1:4, 1:11 horn [3] - 4:8, 46:3, 52:14 Horns [1] - 38:10 hours [9] - 28:23, 29:5, 30:7, 31:18, 31:19, 31:20, 31:23, 32:4 HOUSH [14] - 2:3, 2:3, 12:8, 15:2, 15:6, 15:11, 15:16, 23:4, 23:13, 41:12, 45:11, 49:2, 50:17, 53:9 hundred [1] - 26:5 hurt [2] - 44:22, 45:2 hydrocodeine [1] - 14:6</p>	<p>hydrocodone [12] - 14:7, 14:8, 14:11, 52:16, 53:11, 53:14, 53:18, 53:22, 54:4, 54:10, 54:20, 54:22</p> <p>I</p> <p>ICX [3] - 28:9, 28:10, 28:15 idea [6] - 9:15, 9:17, 20:5, 20:10, 26:18, 44:10 identification [2] - 18:20, 45:19 impaired [1] - 11:7 IN [1] - 57:18 INC [2] - 1:7, 2:6 includes [1] - 11:9 income [4] - 25:4, 25:12, 26:3, 35:11 independent [1] - 4:11 information [1] - 49:20 ingest [1] - 11:2 ingredients [1] - 49:4 initial [1] - 17:22 injectable [1] - 13:10 inside [1] - 49:11 interacted [1] - 51:20 interested [1] - 57:16 Internet [1] - 21:21 intoxicated [1] - 11:9 involved [2] - 16:9, 17:3 iPads [3] - 6:13, 6:15, 6:17 IRS [1] - 23:21 issue [1] - 21:2 item [1] - 55:13 itself [3] - 22:13, 22:14, 22:15</p> <p>J</p> <p>James [3] - 27:3, 41:21, 46:17 JEAN [1] - 2:13 JEAN-CLAUDE [1] - 2:13 job [13] - 28:8, 32:10, 32:20, 32:21, 33:23, 34:3, 34:10, 38:23, 41:3, 41:11, 41:21, 51:12, 51:17 jobs [3] - 36:5, 36:11, 41:17</p>	<p>K</p> <p>Keber [2] - 4:18, 55:5 Kenneth [1] - 51:19 kid [1] - 10:11 kind [5] - 24:9, 29:22, 29:23, 36:16, 51:5 knowledge [2] - 35:4, 35:10</p> <p>L</p> <p>lab [3] - 43:15, 43:20, 44:5 Lab [2] - 48:21, 49:1 label [1] - 49:7 laboratory [1] - 9:4 Lafayette [2] - 1:13, 2:9 laid [2] - 30:9, 30:19 last [10] - 4:16, 8:2, 14:20, 27:19, 27:21, 39:14, 49:14, 49:15, 50:20, 53:17 LAW [1] - 2:3 lawsuit [1] - 49:21 lawyer [4] - 35:19, 35:21, 39:12, 49:23 lay [3] - 30:14, 30:15, 30:16 learn [1] - 8:13 least [3] - 8:6, 38:15, 38:19 led [2] - 20:20, 21:1 left [1] - 39:1 legal [2] - 21:17, 22:9 legalizing [1] - 14:23 less [4] - 27:13, 29:13, 29:21, 33:9 letters [3] - 39:5, 39:11, 41:8 life [1] - 55:2 limited [3] - 26:21, 30:6, 36:5 LINDSTROM [1] - 2:13 lines [1] - 43:13 listened [1] - 21:23 literally [1] - 55:9 live [2] - 11:17, 12:17 lived [1] - 11:20 lives [2] - 47:1, 47:2 LLC [2] - 1:7, 2:6 LLP [1] - 2:12 load [1] - 30:23 locally [2] - 54:7, 54:21 Lockwood [1] - 4:2 log [1] - 28:7 logic [1] - 23:10</p>	<p>look [4] - 6:17, 49:7, 49:8, 51:22 looked [2] - 17:1, 35:9 looks [2] - 13:13, 26:14 loss [1] - 8:8 lost [2] - 24:23, 36:9</p> <p>M</p> <p>M.D [3] - 3:8, 45:21, 52:1 magazine [1] - 22:2 mail [9] - 3:7, 45:20, 46:9, 46:16, 46:20, 47:5, 48:2, 48:9, 50:13 mailed [1] - 48:1 MARIJUANA [2] - 1:7, 2:6 marijuana [13] - 10:11, 10:15, 10:19, 10:22, 11:2, 12:5, 12:10, 12:19, 12:23, 14:21, 15:1, 15:10, 22:2 MARISSA [2] - 57:5, 57:22 Marissa [1] - 1:11 marked [5] - 18:20, 19:1, 45:16, 45:19, 46:3 math [1] - 11:23 matter [2] - 25:1, 32:3 MAZZOLA [6] - 2:13, 4:6, 18:23, 42:8, 45:15, 56:6 Mazzola [1] - 3:2 mean [13] - 6:1, 11:10, 17:16, 23:10, 24:6, 27:11, 30:1, 30:14, 30:18, 33:17, 35:16, 44:8, 51:2 meant [2] - 44:9, 44:10 MEDICAL [2] - 1:7, 2:6 medical [2] - 52:7 MEDTOX [1] - 9:1 mess [2] - 43:15, 44:5 MESSNER [1] - 2:12 might [8] - 9:7, 13:14, 14:4, 18:7, 20:10, 21:1, 43:15, 44:5 Mike [4] - 3:8, 45:21, 51:23, 52:6 mile [8] - 27:12, 27:13, 27:15, 33:9, 34:4, 34:11, 37:1, 37:2 miles [18] - 27:19, 27:21, 28:2, 28:3, 28:5, 28:10, 28:12,</p>	<p>28:15, 28:21, 28:23, 29:2, 29:14, 32:11, 32:13, 32:15, 32:18, 33:22, 35:5 milk [2] - 7:15, 8:9 milligram [1] - 48:19 milligrams [3] - 47:19, 48:11, 49:3 minute [6] - 21:3, 21:7, 21:8, 21:12, 22:5, 22:11 minutes [1] - 42:2 mixture [2] - 29:22, 29:23 money [4] - 31:14, 33:11, 35:14, 35:17 month [2] - 7:23, 53:23 months [3] - 25:17, 25:20, 25:22 morning [1] - 4:8 Motor [2] - 3:6, 18:21 moved [1] - 36:17 MR [20] - 4:6, 12:8, 15:2, 15:6, 15:11, 15:16, 18:23, 23:4, 23:13, 41:12, 42:8, 45:11, 45:15, 45:16, 46:1, 49:2, 50:17, 53:9, 56:5, 56:6 MRO [1] - 20:8 MURA [2] - 1:12, 2:7</p> <p>N</p> <p>name [1] - 57:18 names [2] - 39:4, 41:16 naturally [1] - 25:12 needle [1] - 18:7 never [10] - 16:22, 28:12, 28:15, 37:17, 37:18, 37:20, 37:23, 38:2, 40:20, 49:9 new [5] - 28:8, 32:10, 32:20, 32:21, 33:22 NEW [2] - 1:2, 57:1 New [10] - 1:14, 2:4, 2:9, 2:15, 4:2, 47:2, 47:3, 52:12, 57:6 next [3] - 20:16, 51:10, 51:12 Niagara [1] - 2:4 Nicole [2] - 12:13, 12:15 Nitro [2] - 24:10, 24:11 non [1] - 17:12 none [1] - 11:17 North [2] - 17:2, 37:14 Northeast [1] - 29:11</p>
---	--	---	--	--

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202

716-853-5544

<p>Notary [3] - 1:12, 57:5, 57:22</p> <p>note [2] - 14:4, 43:12</p> <p>notes [1] - 57:13</p> <p>nothing [3] - 11:4, 15:13, 57:9</p> <p>notice [2] - 1:15, 57:10</p> <p>November [4] - 25:19, 25:23, 46:13, 47:6</p> <p>Number [1] - 45:17</p> <p>number [3] - 29:3, 29:5, 37:15</p>	<p style="text-align: center;">P</p> <p>package [2] - 49:9, 49:12</p> <p>PAGE [2] - 3:1, 3:5</p> <p>page [5] - 46:4, 47:17, 49:14, 50:21, 52:1</p> <p>pages [1] - 45:20</p> <p>paid [5] - 27:12, 27:15, 27:17, 30:21</p> <p>pain [1] - 17:13</p> <p>paperwork [1] - 44:11</p> <p>paragraph [3] - 47:16, 49:14, 50:20</p> <p>Parker [1] - 4:2</p> <p>part [4] - 16:9, 29:8, 29:16, 46:9</p> <p>parts [1] - 29:16</p> <p>party [1] - 57:15</p> <p>past [1] - 42:14</p> <p>pasted [1] - 47:8</p> <p>pay [4] - 30:16, 30:19, 30:20, 30:23</p> <p>pays [3] - 34:4, 34:11, 36:23</p> <p>Pennsylvania [2] - 12:18, 52:11</p> <p>per [4] - 27:15, 30:21, 33:9, 34:4</p> <p>percent [4] - 21:9, 21:15, 55:17, 56:2</p> <p>period [2] - 32:5, 53:20</p> <p>permits [1] - 36:15</p> <p>person [2] - 30:21, 51:19</p> <p>personally [1] - 43:9</p> <p>perspective [1] - 34:17</p> <p>peyote [1] - 13:8</p> <p>pharmacy [2] - 54:7, 54:12</p> <p>pick [6] - 17:3, 19:4, 19:6, 19:17, 20:2, 20:6</p> <p>pick-up [6] - 17:3, 19:4, 19:6, 19:17, 20:2, 20:6</p> <p>picture [2] - 20:3, 51:23</p> <p>pictures [1] - 20:2</p> <p>pills [2] - 53:11, 53:14</p> <p>place [2] - 48:11, 57:10</p> <p>PLAINTIFF [1] - 2:2</p> <p>Plaintiffs [1] - 1:5</p> <p>plan [1] - 36:17</p> <p>planned [1] - 36:13</p> <p>PLLC [3] - 1:13, 2:3, 2:7</p>	<p>pocket [1] - 13:13</p> <p>point [1] - 54:2</p> <p>police [2] - 19:3, 19:12</p> <p>policies [1] - 40:19</p> <p>policy [6] - 22:20, 34:22, 34:23, 35:1, 41:14, 41:15</p> <p>political [1] - 15:9</p> <p>politics [1] - 15:12</p> <p>positive [1] - 52:15</p> <p>possession [1] - 53:11</p> <p>preceding [4] - 7:23, 10:21, 11:1, 12:21</p> <p>precisely [1] - 5:2</p> <p>predates [1] - 49:21</p> <p>predating [1] - 50:1</p> <p>prescribed [3] - 52:16, 52:18, 53:17</p> <p>prescribing [1] - 53:22</p> <p>prescription [3] - 13:19, 14:14, 54:1</p> <p>prescriptions [2] - 54:6, 54:19</p> <p>presence [1] - 12:22</p> <p>PRESENT [1] - 2:17</p> <p>pretty [5] - 19:9, 29:10, 30:12, 31:9, 34:1</p> <p>print [1] - 47:15</p> <p>print's [1] - 46:14</p> <p>printed [2] - 50:10, 50:18</p> <p>printout [1] - 50:6</p> <p>printouts [4] - 49:16, 49:19, 50:1, 50:14</p> <p>problem [1] - 32:21</p> <p>process [3] - 16:13, 42:18, 42:22</p> <p>processed [1] - 22:12</p> <p>product [18] - 4:12, 5:6, 5:14, 5:23, 9:19, 9:22, 21:4, 21:11, 21:14, 22:1, 22:21, 26:23, 27:5, 38:16, 43:2, 47:21, 48:15, 50:16</p> <p>Products [1] - 37:14</p> <p>products [25] - 7:3, 7:20, 7:22, 8:2, 8:7, 8:14, 11:2, 13:4, 16:14, 16:16, 16:17, 16:19, 21:5, 21:11, 21:19, 22:4, 22:10, 22:13, 42:10, 42:19, 43:5, 43:14, 43:20, 44:2, 55:6</p> <p>program [2] - 51:5, 51:9</p>	<p>prompt [1] - 9:14</p> <p>prompted [3] - 8:7, 8:16, 17:20</p> <p>proof [1] - 5:21</p> <p>prove [1] - 6:3</p> <p>provided [1] - 9:1</p> <p>proving [1] - 6:20</p> <p>Public [3] - 1:12, 57:5, 57:22</p> <p>purchase [1] - 14:14</p> <p>purchased [10] - 4:12, 5:6, 5:13, 5:22, 21:11, 21:13, 21:15, 21:19, 22:20, 43:5</p> <p>pursuant [2] - 1:15, 57:10</p> <p>put [3] - 13:19, 24:21, 47:8</p> <p style="text-align: center;">Q</p> <p>quantity [1] - 48:20</p> <p>quit [2] - 44:15, 45:6</p> <p>quite [1] - 6:13</p> <p style="text-align: center;">R</p> <p>raise [1] - 26:11</p> <p>ran [2] - 19:10, 19:12</p> <p>Rand [2] - 1:13, 2:8</p> <p>random [1] - 40:20</p> <p>rate [1] - 39:23</p> <p>raw [2] - 22:6, 22:7</p> <p>reaction [1] - 9:23</p> <p>read [1] - 42:6</p> <p>reaffirming [1] - 41:14</p> <p>really [2] - 15:3, 30:1</p> <p>reason [1] - 45:6</p> <p>recap [1] - 4:10</p> <p>recently [2] - 34:13, 34:15</p> <p>Recess [1] - 42:4</p> <p>record [4] - 34:16, 41:22, 41:23, 53:7</p> <p>Record [1] - 42:6</p> <p>Red [1] - 24:14</p> <p>RED [2] - 1:7, 2:6</p> <p>REEVES [1] - 2:12</p> <p>reference [6] - 17:3, 19:6, 46:16, 47:17, 48:9, 55:4</p> <p>referring [2] - 48:2, 52:3</p> <p>regarding [3] - 4:11, 17:19, 23:18</p> <p>regularly [2] - 42:20, 42:21</p> <p>regulation [1] - 30:8</p> <p>regulations [4] - 14:9, 22:19, 28:18, 43:8</p>	<p>rehab [6] - 50:23, 51:3, 51:9, 51:15, 51:16, 51:20</p> <p>rejected [2] - 38:15, 38:17</p> <p>rejection [2] - 39:5, 41:9</p> <p>related [1] - 57:15</p> <p>remainder [1] - 44:20</p> <p>remedies [1] - 17:13</p> <p>remember [7] - 14:19, 16:17, 39:4, 39:10, 50:19, 53:13, 55:7</p> <p>rephrase [1] - 48:3</p> <p>report [2] - 19:2, 19:7</p> <p>reporter [1] - 42:6</p> <p>represent [1] - 47:11</p> <p>request [2] - 18:3, 30:9</p> <p>research [6] - 4:11, 8:18, 8:20, 22:22, 43:6, 50:15</p> <p>researched [1] - 50:3</p> <p>respect [1] - 29:20</p> <p>response [1] - 38:18</p> <p>result [1] - 24:23</p> <p>returns [3] - 23:16, 24:21</p> <p>Review [2] - 3:9, 45:21</p> <p>reviewed [1] - 22:2</p> <p>Richmond [1] - 29:12</p> <p>right-hand [1] - 46:12</p> <p>Road [1] - 4:2</p> <p>round [1] - 13:13</p> <p>routes [1] - 29:21</p> <p>run [1] - 32:4</p> <p style="text-align: center;">S</p> <p>sample [5] - 9:1, 9:9, 9:12, 49:1, 50:2</p> <p>SAT [1] - 51:4</p> <p>saw [3] - 11:12, 13:13, 22:1</p> <p>Sayre [3] - 52:10, 54:15, 54:16</p> <p>scratch [1] - 16:2</p> <p>screenshot [1] - 5:18</p> <p>seal [1] - 57:18</p> <p>second [2] - 17:6, 49:14</p> <p>see [13] - 9:13, 17:11, 18:11, 19:6, 23:16, 34:18, 34:19, 40:17, 46:13, 46:19, 47:19, 50:23, 55:10</p> <p>seed [2] - 7:8, 7:12</p> <p>seeing [1] - 14:4</p> <p>semi [1] - 19:12</p> <p>semi-truck [1] - 19:12</p>
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<p>send [1] - 43:19 sending [3] - 47:14, 47:18, 48:10 sent [8] - 46:9, 46:16, 46:20, 47:11, 47:21, 48:4, 48:20, 49:1 sentence [1] - 49:15 set [2] - 35:23, 57:10 shake [4] - 7:10, 8:8, 8:10, 42:19 shakes [1] - 42:11 shampoo [2] - 7:18, 8:11 shared [1] - 39:11 shelf [1] - 22:8 shorthand [1] - 57:13 shoulder [1] - 18:13 show [1] - 5:9 showed [1] - 23:20 showing [2] - 46:3, 50:15 shows [1] - 53:7 single [2] - 19:10, 19:15 single-vehicle [1] - 19:15 sitting [1] - 30:22 situation [1] - 46:7 six [1] - 42:15 skull [2] - 18:17, 18:18 slightly [1] - 25:16 small [1] - 46:14 smoke [4] - 12:5, 12:19, 13:2, 13:8 smoked [1] - 14:20 smoking [1] - 12:23 someone [2] - 6:3, 43:14 someplace [1] - 11:12 sometimes [1] - 23:2 sort [2] - 9:23, 10:5 sought [6] - 38:23, 39:14, 40:21, 41:2, 41:11, 41:17 Southern [1] - 52:11 Square [2] - 1:13, 2:9 ss [1] - 57:2 stamp [1] - 5:18 stance [1] - 15:9 standard [1] - 42:21 starting [1] - 37:10 starts [1] - 46:6 STATE [1] - 57:1 State [3] - 47:3, 52:12, 57:6 statement [1] - 50:21 States [1] - 39:21 STATES [1] - 1:1 stay [2] - 15:12, 40:16</p>	<p>still [8] - 6:1, 6:8, 6:14, 6:23, 14:11, 21:12, 23:1, 53:14 store [1] - 8:15 STORM [2] - 1:12, 2:7 Street [1] - 2:4 stuff [1] - 44:12 subscribed [1] - 57:18 substance [1] - 16:9 Sue [1] - 2:17 suffered [1] - 24:23 supposed [1] - 49:6 suspect [1] - 20:13 sworn [2] - 4:3, 57:9 system [1] - 9:13</p> <p>T</p> <p>target [1] - 35:11 tattoos [3] - 18:9, 18:11, 18:14 taurine [1] - 24:14 tax [3] - 23:16, 24:21 team [2] - 44:18, 45:7 telephone [1] - 42:1 terms [2] - 28:21, 38:22 test [13] - 7:23, 8:3, 8:5, 10:22, 11:1, 16:4, 17:23, 20:15, 20:17, 39:9, 52:21, 53:4, 53:6 tested [11] - 17:20, 17:22, 18:2, 18:4, 47:22, 48:11, 48:18, 48:20, 49:22, 50:7, 52:14 testified [4] - 4:4, 10:10, 10:14, 48:4 testify [1] - 57:9 testifying [1] - 55:7 testimony [8] - 6:6, 47:22, 52:3, 57:8, 57:9, 57:10, 57:11, 57:12 testing [4] - 43:7, 43:20, 47:18, 48:7 tests [1] - 16:6 Texas [3] - 9:5, 9:7, 20:18 text [1] - 46:19 THC [13] - 9:13, 9:15, 21:3, 21:7, 21:12, 21:16, 22:5, 22:11, 22:15, 22:23, 23:11, 44:11, 52:15 THE [3] - 2:2, 2:6, 2:11 thereafter [1] - 57:11 thereof [1] - 57:16 thinking [1] - 40:4</p>	<p>third [1] - 47:16 Third [1] - 2:14 thousand [1] - 26:5 three [1] - 25:20 Tier [1] - 52:11 ties [1] - 19:3 tin [2] - 13:14, 13:16 tobacco [3] - 13:4, 13:14, 13:16 today [1] - 28:19 today's [1] - 46:4 together [1] - 47:9 tolerance [1] - 22:19 took [3] - 20:15, 27:4, 53:3 total [2] - 25:3, 25:4 traffic [2] - 29:13, 29:21 training [2] - 16:9, 16:10 transcribed [1] - 57:11 transcription [1] - 57:13 transition [1] - 37:10 transporting [1] - 38:23 transports [2] - 40:22, 41:3 treatment [1] - 52:7 Trial [1] - 1:10 tried [3] - 8:12, 9:21, 34:3 Tripp [2] - 4:17, 55:5 truck [11] - 13:23, 17:3, 19:4, 19:6, 19:11, 19:12, 19:17, 19:20, 20:2, 20:6, 32:4 true [2] - 43:1, 57:12 truth [3] - 57:9, 57:10 try [2] - 8:17, 15:12 trying [1] - 4:20 turn [3] - 28:3, 28:5, 28:10 turned [3] - 13:12, 28:12, 28:15 two [7] - 25:22, 38:8, 38:15, 38:19, 45:20, 46:4, 53:19 two-page [1] - 46:4 type [2] - 18:14, 46:5 typewriting [1] - 57:12</p> <p>U</p> <p>unaware [1] - 18:1 underneath [1] - 46:19 UNITED [1] - 1:1 United [1] - 39:21</p>	<p>unopened [1] - 48:5 up [14] - 4:9, 17:3, 19:4, 19:6, 19:17, 19:23, 20:2, 20:6, 41:19, 43:15, 44:5, 46:5, 49:9, 52:11 upper [1] - 46:12 urine [2] - 40:15, 52:21</p> <p>V</p> <p>vape [1] - 13:6 variables [1] - 31:3 varies [1] - 40:1 vehicle [1] - 19:15 Vehicle [2] - 3:6, 18:21 Vestal [1] - 54:14 video [15] - 4:17, 4:23, 5:3, 5:10, 5:13, 5:16, 5:19, 5:22, 6:19, 6:21, 21:23, 55:5, 55:9, 55:11, 55:19 video's [1] - 6:1 views [1] - 15:13 violation [2] - 14:8, 43:7 violations [1] - 28:7 vitamins [1] - 24:14 vs [1] - 1:6</p> <p>W</p> <p>wages [2] - 24:23, 36:9 wait [3] - 37:23, 48:3, 51:8 waiting [1] - 30:23 watch [2] - 55:9, 55:19 watched [7] - 5:3, 6:9, 6:10, 6:18, 6:20, 55:23, 56:2 watching [2] - 4:17, 5:12 website [1] - 49:19 weight [1] - 8:8 WENDY [1] - 2:13 WESTERN [1] - 1:2 WHEREOF [1] - 57:18 whole [1] - 57:9 why's [1] - 36:21 wife [9] - 8:20, 8:23, 9:9, 9:12, 9:19, 15:4, 15:19, 15:21, 31:23 willing [2] - 50:22, 51:2 window [1] - 13:12 witness [2] - 5:12, 57:8</p>	<p>WITNESS [2] - 3:1, 57:18 word [2] - 16:22, 16:23 words [1] - 22:5 Workers' [2] - 44:23, 45:4 Worksheet [2] - 3:6, 18:21 wreck [3] - 44:22, 52:19, 52:20 written [1] - 14:5 wrote [2] - 47:5, 47:7</p> <p>X</p> <p>XC [1] - 28:8</p> <p>Y</p> <p>year [14] - 8:4, 8:5, 10:21, 11:1, 11:4, 11:19, 12:21, 25:8, 27:19, 27:22, 35:5, 44:20, 51:10, 54:16 years [13] - 14:22, 23:20, 27:5, 34:12, 34:19, 38:8, 38:15, 38:19, 40:16, 40:17, 42:15, 53:19, 54:2 yesterday [11] - 4:9, 4:10, 4:21, 13:18, 23:17, 43:12, 47:22, 48:4, 48:16, 52:4, 55:4 Yolanda [1] - 24:16 YORK [2] - 1:2, 57:1 York [10] - 1:14, 2:4, 2:9, 2:15, 4:2, 47:2, 47:3, 52:12, 57:6 younger [1] - 10:20 YouTube [2] - 4:17, 55:4</p> <p>Z</p> <p>zero [4] - 21:9, 21:14, 22:19, 22:23</p>
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